

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2020] SCCA ... 18 December 2020
MA 19/2020
(Arising in SCA06/2018)

In the matter between

Christianne Belmont

Applicant

and

Antoine Belmont

Applicant

*(both Applicants rep. by Mr France Bonte
together with Miss Alexandra Madeleine)*

and

Karine Belmont

Respondent

(rep. by Mr Bernard Georges)

Neutral Citation: *Belmont & Anor v Belmont* (MA 19/2020) [2020] (Arising in SCA 6/2018)
SCSC Decemeber 2020

Before: Fernando President, Robinson JA, Burhan J

Summary:

Heard: 5 November 2020

Delivered: 18 December 2020

ORDER

The application is dismissed with costs.

RULING OF THE COURT OF APPEAL

ROBINSON JA (FERNANDO PRESIDENT, BURHAN J CONCURRING)

The background

[1] This application is before the Court of Appeal of Seychelles by way of notice of motion supported by affidavits. It relates to the the appeal *Karin Belmont versus Joseph Belmont Civil Appeal SCA 41/2017* (the appeal). The Respondent, the daughter of an interdicted individual, Mr Joseph Belmont, was the Appellant in the said appeal. The Supreme Court had appointed Mr Belmont's wife, Mrs Christianne Belmont and his brother, Mr Antoine Belmont, the applicants in these proceedings, as his guardians instead of his daughter. It was common cause in the appeal that Mrs Christianne Belmont and Mr Antoine Belmont had not been parties before the Supreme Court when the order appointing them was made. It was on this basis, among others, that Karine Belmont appealed the decision of the Supreme Court.

[2] The Court of Appeal, comprising of Fernando PCA, Robinson JA and Burhan AJA delivered a judgment on the 21 August 2020 in the appeal (hereinafter referred to as the "*Judgment*").

[3] In the Judgment, the Court of Appeal made orders *inter alia* at paragraph 36 —

"[36] [...] allowing the appeal, setting aside the appointment of Mrs Christianne Belmont and Mr Antoine Belmont as joint guardians of the Respondent and substituting therefor the Appellant, Miss Karine Belmont as sole guardian for the Respondent and to administer and manage the Respondent's affairs and property".

[4] In the present application, Mrs Christianne Belmont and Mr Antoine Belmont, the applicants, are seeking to "recall or review" the Judgment, on the grounds that it contained fundamental errors.

The Application

[5] The application filed by way of notice of motion by the Applicants on the 9 September

2020, seeks the following orders —

- "1 *Recalling or reviewing the judgment delivered in appeal, involving the inherent jurisdiction of the Court, due to a fundamental error affecting the basis of the judgment.*
- 2 *Pursuant to rule 31(2) of the Seychelles Court of Appeal Rules, 2005 admitting evidence of the Applicants as regards their willingness and fitness to be appointed as guardians, as filing a cross-petition did not arise in the Supreme Court proceedings due to the fact that Joseph Belmont (now interdicted) resisted the application for interdiction and the application for the Respondent (Karine Belmont) to be appointed his guardian.*
3. *In the alternative, recalling the judgment and remitting the case to the Supreme Court for the purpose of admitting the evidence as prayed for in paragraph 2".*

[6] The Applicants have each filed an affidavit in support of the application. In her affidavit, Mrs Christianne Belmont avers the reasons for "*recall or review*" of the Judgment, as follows —

"[...]

5. *On 7th February 2017, the present Respondent filed an application in the Supreme Court for interdiction of my husband and for her to be appointed as the sole guardian of the person and property of my husband.*

6. *My husband was cited as the only Respondent in that application. In his answer to the application, he averred inter alia that he was in good health, mentally and physically, and that if he was interdicted, it should be me who should be appointed to take care of him and not his daughter, the present Respondent.*

7. [...].

8. *In view of the pleadings in this case, there was no necessity for me to cross-petition for guardianship as medically my husband was suffering only "mild cognitive impairment", but was able to give evidence cogently and comprehensively resisting interdiction and appointment of his daughter (Karin) as sole guardian.*

9. [...]. *I do not seek revision of that order of interdiction [...].*

10. *I am advised that the duties of the guardian to an interdicted person is to look*

after his person and property. I state that the Respondent who lives elsewhere will not be able to look after his person nor spend for carers in the present condition of my husband. Hence, as feared by him in the application before the Supreme Court, the Respondent would meddle with his movable and immovable properties and seek to deprive others of their inheritance.

11. I respectfully aver that the Honourable Court of Appeal, in paragraph 34 of its judgment dated the 21st August 2020 erred when it reversed the appointments made by the Supreme Court on the ground that the Attorney General as Ministère Public "was not in favour of Mrs Chritianne Belmont and Antoine Belmont being appointed as joint guardians of the Respondent, two people who were never before the Court". What the Attorney General stated in paragraph 8 of his written submissions was that he was not in favour of me being appointed with Karin Belmont as such appointment would not be in the best interest of my husband. This fundamental error vitiated the judgment and rendered it to be invalid.

12. I also aver that the Honourable Court of Appeal held that 1 and 2nd Applicants had not cross-petitioned for appointment as guardians. In this respect I reiterate the averments made by me in paragraphs 6, 7 and 8 of this affidavit as to the circumstances for not seeking appointment as guardian by cross-petition.

13. I further aver that the appeal was filed against my husband who had no legal capacity after being interdicted. 1 and 2nd Applicants were cited in the Notice of Appeal as affected parties but were not made Respondent. This error rendered the judgment to be a nullity.

14. It is respectfully averred that these fundamental errors of fact and procedure affected the basis of the judgment of the Honourable Court of Appeal and caused a miscarriage of justice.

15. In these circumstances, I aver that the Honourable Court be pleased to recall or review the judgment dated 21st August 2020 and maintain the appointments made by the Supreme Court or admit my evidence or that of the 2nd Applicant or in the alternative, as submitted by the Attorney General in paragraph 14 of the written submissions, remit the case back to the Supreme Court to examine us on our suitability to be appointed as joint guardians to the exclusion of the present Respondent."

[7] Mr Antoine Belmont, the brother of Mr Joseph Belmont, avers the reasons for "recall or review" of the Judgment, as follows —

"[...].

3. *I am advised that the Honourable Court of Appeal in in paragraph 34 of its judgment has, in rescinding the appointmnets of Mrs Christianne Belmont and me as joint guardians, erroneously stated that "The Ministère Public has expressed the view that he was not in favour of Mrs Christianne Belmont and me being appointed as joint guardians. In fact, what the Attorney General stated in paragraph 8 of his written submissions was that appointing the Respondent "Karin Belmont and Mrs Christianne Belmont as joint guardians would not be in the best interests of Mr Joseph Belmont. This fundamental error vitiated the judgment and rendered it to be invalid under Article 495 of the Civil Code as it occasioned a miscarriage of justice.*

4. *Apart from the above judgments, I abide by the grounds urged by Mrs Christianne Belmont in her affidavit and respectfully urge the Honourable Court to recall or review the judgment and admit the evidence of Mrs Christianne Belmont and me under Rule 31 (2) of the Court of Appeal Rules, if deemed necessary, or in the alternative remit the case back to the Supreme Court for this purpose.*

[...]."

The basis of the Court of Appeal's jurisdiction to set aside its judgment or order

- [8] Before I consider the merits of the application, I have to decide whether or not the Court of Appeal has jurisdiction to entertain this application.
- [9] Section 4 of the Courts Act provides that the Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England. This provision concerns the inherent jurisdiction of the Supreme Court.
- [10] The following provisions of the Constitution of the Republic of Seychelles and section 12 (3) of the Courts Act are relevant in relation to the jurisdiction of the Court of Appeal.
- [11] Article 120 (3) of the Constitution stipulates: "*120 (3) The Court of Appeal shall, when exercising its appellate jurisdiction, have all authority, jurisdiction and power of the court from which the appeal is brought and such other authority, jurisdiction and power as may be conferred upon it by or under an Act*".

[12] Section 120 (4) of the Constitution stipulates: *"Subject to this Constitution and any other law, the authority, jurisdiction and power of the Court of Appeal may be exercised as provided in the Rules of the Court of Appeal"*.

[13] Section 12 (3) of the Courts Act stipulates: *"12 (3) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England"*.

[14] The effect of these statutory provisions is that the written law of Seychelles does not confer upon the Court of Appeal any inherent jurisdiction. The jurisdiction of the Court of Appeal is derived from and is limited by statute. However, I am of the opinion that the Court of Appeal has inherent jurisdiction in terms of Article 120 (3) of the Constitution, read with section 12 (3) of the Courts Act, to the extent that it is exercising its appellate jurisdiction. However, I reserve my opinion as to whether or not Article 120 (3) of the Constitution, read with section 12 (3) of the Courts Act, provide a solution to the jurisdictional problem I am considering in this case.

[15] I now consider the question at issue in light of the inherent powers of the Court of Appeal of Seychelles.

[16] In the case of *Taylor v Laurence [2002] 2 All ER 353* the English Court of Appeal stated

—
"[15] If, as we believe it is necessary to do, we go back to first principles, we start with the fact which is uncontroversial, that the Court of Appeal was established with a broad jurisdiction to hear appeals. Equally it was not established to exercise an originating as opposed to an appellate jurisdiction. It is therefore appropriate to state that in that sense it has no inherent jurisdiction. It is, however, wrong to say that it has no implicit or implied jurisdiction arising out of the fact that it is an appellate court. As an appellate court it has the implicit powers to do that which is necessary

to achieve the dual objectives of an appellate court to which we have referred already (see para 0 above)".

[17] Paragraph 26 of **Taylor**, *supra*, states —

" [26] Before turning to Mr Eder's argument, it is desirable to note that, while, if a fraud has taken place a remedy can be obtained, even if the Court of Appeal has no "jurisdiction", it does not necessarily follow that there are not other situations where serious injustice may occur if there is no power to re-open an appeal. We stress this point because this court was established with two principal objectives. The first is a private objective of correcting wrong decisions so as to ensure justice between the litigants involved. The second is a public objective, to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents. (See the White Book Service 2001 paragraph 52.0.3.)"

[18] **Taylor**, *supra*, goes on to state —

"[54] Earlier judgments referring to limits on the jurisdiction of this court must be read subject to this qualification. It is very easy to confuse questions as to what is the jurisdiction of a court and how that jurisdiction should be exercised. The residual jurisdiction which we are satisfied is vested in a court of appeal to avoid real injustice in exceptional circumstances is linked to a discretion which enables the court to confine the use of that jurisdiction to the cases in which it is appropriate for it to be exercised. There is a tension between a court having a residual jurisdiction of the type to which we are here referring and the need to have finality in litigation. The ability to re-open proceedings after the ordinary appeal process has been concluded can also create injustice.."

[19] I have considered, **Taylor**, *supra*, bearing in mind that cases from courts of other jurisdiction, which in any event are of persuasive authority in Seychelles, have to be considered in light of the provisions of the Seychellois Constitution and its Courts Act.

[20] In **Taylor**, *supra*, the English Court of Appeal affirmed that as an appellate court it has a residual jurisdiction to re-open an appeal already determined to avoid real injustice in exceptional circumstances.

[21] I take a similar approach to the issue. I opine that the Court of Appeal of Seychelles as an appellate Court has a residual jurisdiction or inherent power to set aside and rehear an

appeal in cases of serious procedural unfairness or irregularities such that the judgment or order ought to be treated as a nullity.

The merits of the application

[22] I have considered this application and the written submissions of Counsel with care. I start by considering the *locus standi* of the Applicants to make this application. The Court of Appeal by the Assistant Registrar of the Court of Appeal invited further submissions from all Counsel on whether or not the Applicants have "*locus standi*" to make this application.

[23] Having considered the written submissions of the Attorney General as the *Ministère Public* it is not clear on what basis he contends that the Applicants have no "*locus standi*" to make this application. Counsel for the Applicants contends in her written submissions that the Applicants have "*locus standi*" to make the application and submits that her clients appeared in the appeal as "*persons directly affected by the appeal*" for having been so cited in the Notice of Appeal. She adds that they did not appear in the appeal as representing the interests of the Appellant. In furtherance of her submissions, she submits that: "*the locus standi arises from the decision of the Court of Appeal which, it is respectfully submitted has been tainted by factual errors which have caused a miscarriage of justice as envisaged in Article 495 of the Civil Code.*"

[24] I point out that the Applicants were not parties to this case before the Supreme Court. They never appeared before the Court of Appeal in their personal capacities. They participated in the appeal as joint guardians of Mr Joseph Belmont. It stands to reason that their submission that they appeared as "*persons directly affected by the appeal*" for having been so cited in the Notice of Appeal, does not give them the right to appear. As rightly pointed out by Counsel for the Respondent, they would thus appear as representing the rights of Mr Joseph Belmont, not as parties in their own right. Thus, it is opined that such a right to appear (as representing the interests of Mr Joseph Belmont) would necessarily extend to the right to make an application invoking the inherent powers of the Court of Appeal in a matter affecting the rights of Mr Belmont, but not their own rights.

[25] This application is made in the names of the Applicants, not as joint guardians representing Mr Joseph Belmont. In light of the orders and averments contained in the notice of motion and

the affidavits, respectively, I ought not to treat it as one made by the Applicants as joint guardians representing Mr Joseph Belmont. In this respect, Counsel for the Respondent is right to submit that this application does not concern Mr Joseph Belmont, but the Applicants in their personal capacities. It is clear that, by this application, the Applicants are applying to replace the Respondent as guardians to Mr Joseph Belmont. The remedies they seek from the Court of Appeal concern themselves in their private capacities, but does not concern Mr Joseph Belmont.

[26] For the reasons stated above, I accept the submissions of Counsel for the Respondent that the Applicants have no legal standing to make this application and, therefore, cannot invoke the inherent powers of the Court of Appeal. In any event, I hold the view that this is not a fit case for the Court of Appeal to invoke its inherent powers as explained, as the Judgment cannot be described as a nullity. The Court of Appeal did not make any findings which breached any of the rights of the Applicants. In the same vein, I add that there was no serious procedural irregularity which would have caused a failure of natural justice.

[27] The Court of Appeal reached its decision on a simple assessment of the fact that the Applicants had been appointed as guardians without being officially present in the Supreme Court, without their consent having been sought and without having been examined as to their suitability. In appointing them the Supreme Court had not proceeded to a balancing assessment of the respective abilities and suitability of the Respondent on the one hand and the Applicants on the other hand. As submitted by Counsel for the Respondent, the Supreme Court had plucked two persons at random for appointment, while disregarding the Respondent, who had successfully petitioned the Supreme Court for the interdiction of her father, when the persons appointed had not.

The Decision

[28] For the reasons stated above, I dismiss the notice of motion with costs.

Signed, dated and delivered at Ile du Port on 18 December 2020

Robinson JA

I concur

Fernando President

I concur

Burhan JA