

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC
CS 91/2019

In the matter between:

GARY ALBERT CAMILLE

1st Plaintiff

VERONIQUE VICKI SHAW
(rep. by T Christen)

2nd Plaintiff

and

MARIE MAY KOLSH
(rep. by D Cesar)

1st Defendant

SARAH ZARQUANI RENE

2nd Defendant

LOUISA CARMELLE RENE

3rd Defendant

ELLA SETAREH RENE

4th Defendant

DAWN ELSA RENE
*(A minor herein rep. by her mother and
guardian Sarah Zarquani Rene)
(rep. by J Camille)*

5th Defendant

PANDORA RENE
(Unrepresented)

6th Defendant

Neutral Citation: *Camille & Anor v Kolsh & Ors* (CS 91/2019) [2019] SCSC (29th November 2023)

Before: Govinden CJ

Summary: Possession of the status of illegitimate child children; Coincidence of facts indicating the relationship of descent and parenthood; paternal descent pursuant to the provisions of Articles 340 and 321 of the Civil Code of Seychelles; More than one cause of action in the same suit, removal of a cause.

Heard: 1/12/21;2/12/21;6/12/21;6/10/22;7/10/22;10/10/22;13/10/22;14/10/22

Delivered: 29th November 2023

JUDGMENT

GOVINDEN CJ

INTRODUCTION

- [1] The Plaintiffs filed a Plaintiff dated 17th June 2019 and are praying for a judgment declaring that they are the natural children of the late France Albert Rene (hereinafter referred to as the "deceased"), who passed away on 27th February 2019. They further pray that as heirs of the deceased they are also entitled to a share of his estate under the principles of reduction of inheritance as they have been excluded from the Will of the deceased.
- [2] The 1st Defendant was appointed as Testamentary Executrix in the Will. The 2nd Defendant is the surviving spouse of the deceased. The 3rd, 4th, 5th and 6th Defendants are purportedly the legitimate children of the deceased.

PLEADINGS

- [3] The Plaintiffs make the following material averments in their Plaintiff.

"1. The First and Second Plaintiffs are the biological and illegitimate children of their late father, France Albert Rene (hereinafter referred to as "the Deceased") who died on 27th February 2019 having made a last will and testament (herein referred to as "the Will") dated 27th September 2016.

2. The First Defendant was appointed Testamentary Executrix in the Will. The Second Defendant is the surviving spouse of the Deceased and a testamentary legatee of the estate of the deceased in the Will. The Third, Fourth, Fifth and Sixth Defendants are purportedly the legitimate children of the deceased born from his wedlock with the Second Defendant and are testamentary legatees to the estate of the Deceased in the Will but the Plaintiffs make no admissions as to their legitimacy and put them to strict proof thereof. The Fifth Defendant is a purportedly a legitimate child of the deceased and is a testamentary legatee to the estate of the deceased in the Will but no admissions are made as to her legitimacy and the Plaintiffs put her to strict proof thereof. The Will makes no legacies to the Plaintiffs.

3. *The Plaintiffs aver that their birth certificates do not bear the name of Deceased in the column disclosing the particulars to the father therein, although the latter treated them as his children.*

4. *The Plaintiffs aver that they rely on Article 321 of the Code and aver that there is a sufficient coincidence of fact indicating the relationship of descent and parenthood between themselves and the Deceased, in particular, the Plaintiffs aver that they will establish the following principal facts under Article 321, namely that:*

- a. *the Deceased has treated them as his children and that in his capacity as father, he has provided for their education, maintenance and start in life;*
- b. *they have always been recognised as the children of the Deceased in Society; and*
- c. *they have been recognised as such by the family of the Deceased.*

5. *The Plaintiffs will also rely upon oral evidence of the Plaintiffs and their mother pursuant to Article 323 of the Code which established the fact that the Plaintiffs are the biological children of the Deceased*

6. *The Plaintiffs also rely upon evidence in writing consisting of correspondence between the Deceased and the Plaintiffs and other family documents, papers and photographs of the Deceased pursuant to Article 324 of the Code.*

7. *The Plaintiffs also rely on Article 338 of the Code which provides that the rights of an illegitimate child shall be assimilated in so far as possible with those of a legitimate child and that the rights of succession of illegitimate children are regulated in the Title Succession of the Code.*

8. *The Plaintiffs further rely on Article 340 of the Code and aver that there exists:*

- a. *letters or other writing emanating from the Deceased containing an unequivocal admission of paternity;*
- b. *evidence that the Deceased and the Plaintiff's mother notoriously lived together as husband and wife during the period of conception; and*
- c. *evidence that the Deceased provided for or contributed to the maintenance and education of the Plaintiffs in the capacity of father.*

9. *Additionally, the Plaintiffs will rely on paragraph 340(4) of the Code which provides that the child whose paternity has been proved under Article 340 is entitled to bear his father's name in addition to a share in his father's succession under the Title "Succession".*

10. *The Plaintiffs will rely on the Title of Succession and in particular Article 745 which provides that children take in equal shares and per head if they are all of the first degree and inherit in their own right and they take per stripes (sic, stirpes) and Article 757 which provides that "natural children shall have in general ... the same rights as the legitimate child."*

11. *The Plaintiffs' present status of illegitimacy and the non-entry of the name of the Deceased on their birth certificates gives rise to the legal presumption that there is a father who is unknown in law. The Plaintiffs, who are both of age, are each desirous of being declared by this Court of issue of the Deceased and that the entry on their birth certificates be amended to bear the name of the Deceased as particulars of father thereon.*

12. *The Plaintiffs aver that as heirs of the Deceased they are entitled to a share of the estate under the principles of reduction of inheritance, entitlement of the testamentary heirs having been excluded from the Will of the Deceased. The estate bounty of the Deceased comprises, inter alia, of immovable property, transfers which the Plaintiffs aver were "donations deguisee," deposits in bank accounts in the Seychelles and outside the jurisdiction, shareholdings held in the name of the Deceased and his agents and the First Defendant for and on behalf of the Deceased, immovable property in the Seychelles and Australia and other real and personal assets in the Seychelles and Australia and in other unknown jurisdictions which are presently being established by due enquiry and will be further identified through the process of tracing actions authorized by the Courts in the Seychelles and other jurisdictions overseas.*

13. *The Plaintiffs will further aver that on the basis of their present illegitimate status, they appear to have no interest in the estate of the Deceased, the succession thereof devolving from his death, in the application in CS49 of 2019 by Marie May Kolsh, which is presently sub judice before the Supreme Court of the Seychelles for her confirmation as testamentary executrix.*

The Plaintiffs aver that they have an interest in rem and in personam in the succession of the estate and such interest should be recognised by the granting of a declaration they seek before this Court by the making of an Order to such effect. The Plaintiffs fear that there is a real and immediate risk that in the event that the Court grants the Prayer for Relief in SC49 of 2019 by the First Defendant, she shall forthwith proceed, as executrix with the administration of the estate of the Deceased by distribution of the legacies to the Second, Third, Fourth, Fifth and Sixth Defendants, thereby causing the alienation of the bounty of succession from the Plaintiffs and others who are in the process of formalising their status to become members of the class of heirs entitled to a claim as co-heirs in the Deceased's succession together with the Defendants.

15. *The Plaintiffs make the following averments in relation to the First Defendants:*

- a. *As part of the succession consists of immovable property, that property is vested in her as an executrix who acts as a fiduciary in accordance with Article 724(4) of the Code and is thereby subject to the rules laid down in Chapter VI of the Title (i) and Chapter V, Section VII of the Title (ii) of Book of 3 of the Code.*
- d. *She is also subject to Practice Direction (i) of 1989 (subsidiary legislation under this Chapter whereby the executrix is under an obligation to disclose so the following documents inter alia the bank statements, savings books or certificate of*

deposit showing ownership of any moveable assets of the deceased consisting of money, cash or securities).

- e. By virtue of Article 825 of the Code, the functions of the fiduciary shall be to hold, manage and administer the property honestly, diligently and in a business-like manner as if he were the sole owner of the property.*
- f. By virtue of Article 827 of the Code, as a fiduciary the executrix is under a duty to render full and regular account of his [her] management of the succession until such time as his functions are terminated.*
- g. By virtue of Article 829, the Court has wide powers at the instance of an interested party or the Attorney General to make such orders relating to the appointment or dismissal of a fiduciary or to his management as it thinks fit, notwithstanding any term to the contrary in the instrument of appointment of such appointment.*

16. The Plaintiffs have reason to believe and do so believe that unless the Court makes an Order for the stay of the proceedings of CS49 of 2019 by the First Defendant, or if the confirmation of the executrix has already been Ordered by this Court, that unless an injunction is issued with a copy to the Registrar General to prevent and quash all transactions by the First Defendant pending the hearing and exhaustion of this suit in order to preserve the bounty of the estate and the preclude the alienation thereof for the purpose of redistribution under the rules of reduction by the Plaintiffs who have been excluded, thus disinherited as the issues of the Deceased in the Will, the executrix will forthwith distribute all the estate to the five Defendant testamentary heirs.

17. The Plaintiffs further aver that the testamentary estate is of very substantial value and that great loss will be caused to the Plaintiffs if the executrix distributed the estate solely to the five Defendants. In those circumstances, the first Defendant would be in breach of her fiduciary duties owed to the estate in accordance with the powers invested in her on her appointment as executrix and would thereby be liable in damages to the Plaintiffs for the failure properly to discharge her duties as executrix and would be acting unconscionably in the knowledge that the Plaintiffs and others have an actionable claim to a portion of the estate.

18. The Plaintiff's averment against the First Defendant in paragraph 12 above is further supported by virtue of the fact that despite being requested by the Plaintiffs in Plaint CS37 2019 to refrain from proceeding with CS 49 of 2019, she has knowingly and unconscionably proceeded with the filing of an application to alienate and cause the disinheritance of the Plaintiffs in that action for her benefit and that of the other Defendants and others who are her daughters and step-daughters of the Deceased.

19. In that regard, the Plaintiffs also aver that the first Defendant has acted in breach of her fiduciary duties as executrix against the Plaintiffs and others in relation to the administration of the estate and has acted wrongly and in bad faith.

20. Furthermore, the Plaintiffs reserve the right hereinafter after discovery and/or interrogatories to make further allegations of impropriety against the First and/or Second Defendant, including breach of fiduciary duty and/or bad faith and/or fraud and/or alienation of assets of the Deceased during his lifetime and subsequent to his death.”

[4] As a result of the aforementioned averments, the Plaintiffs pray to this Court for the following orders:

- i. *“To declare the First and Second Plaintiffs are the children of the Deceased and that they have an interest in rem and in personam in the succession of the Deceased’s estate;*
- ii. *To declare pursuant to Article 745 and 757 of the Code that the Plaintiffs have the same rights as the legitimate children in the Succession and take in equal shares and per head;*
- iii. *To Order the Chief Civil Status Officer enter the name of the Deceased in the entry of their births in the Birth Register at the Office of the Civil Status pursuant to Section 34 of the Civil Status Act Cap 34 and henceforth on their respective birth certificates hearing the name of the Deceased thereon;*
- iv. *To forthwith Order a stay to the hearing of CS49 of 2019, Ex-parte Marie May Kolsh and in the event that the matter has already been heard and the order appointing her as Testamentary Executrix has been issued, to further Order a Stay of the process of Execution of the Administration of the Estate of the late France Albert Rene altogether, pending the exhaustion of this suit, with Notice to the Land Registrar and the Registrar General;*
- v. *To Order that the First Defendant makes full disclosure to the Plaintiffs of all documents and papers including Court Orders relating to the appointment of herself as executrix of the Deceased’s estate and all documents relating to the management of The Succession including, but not limited to, the identification and valuation of all the assets held by her and the Second Defendant on behalf of the Deceased;*
- vi. *To Order that the First Defendant disclose to the Plaintiffs all the transactions including, but not limited to, transfers of moveable and immovable property in relation to the Deceased’s assets both real and personal that have taken place since her appointment as executrix;*
- vii. *To Order that the Second Defendant make full disclosure of all transactions including transfers by way of gift inter vivos or otherwise to herself and other third parties in relation to the Deceased’s moveable or immoveable assets during the last five years;*

- viii. *To Order that the First and Second Defendants disclose to the Plaintiffs the whereabouts of all assets both moveable and immovable, owned by the Deceased in the last twenty years including, but not limited to, the ownership of land in other countries in the name of the Deceased and/or in the joint names of the Deceased and the Second Defendant;*
- ix. *To Order that the First and Second Defendants provide to the Plaintiffs a full inventory of all assets of moveable and immovable property owned by the Deceased or held by others on trust for the Deceased and all shareholdings held by the Deceased solely or in the joint names of the Deceased and Second Defendant and/or the other Defendants in Action CS37 2019 and/or other parties.*
- x. *To Order that the First and Second Defendants be restrained from disposing of any assets owned by the Deceased to any at the Defendants in Action CS 37 of 2019 or any third parties without the Order of this Court consenting to such disposal;*
- xi. *To make such Orders that the Court thinks fit in the circumstances to prevent any injustice, breach of fiduciary duty, fraud, bad faith and alienation of assets of the Deceased and those alienated during his lifetime presently registered in the name of the second Defendant or subsequently transferred to the third, fourth and fifth Defendants;*
- xii. *To Order that the First Defendant pay the Plaintiff's costs of this suit."*

[5] As for the 1st Defendant, her defence as reflected in her Statement of Defence is averred as follows.

[6] She admits paragraph 1 of the Plaint insofar that the deceased made a last Will and Testament dated 27th September 2016, but she does not admit or deny that the Plaintiffs are his biological and illegitimate children. Accordingly, she puts them to the strictest of proof including scientific test of DNA to prove biological relationship.

[7] The 1st Defendant admits being appointed as the Testamentary Executrix in the Will and she relies on Article 322 and 724 (1) of the Civil Code. She further puts the Plaintiffs to the strictest proof with regards to their relationship with the 2nd to 6th Defendants and the fact that the Will makes no legacies to them.

[8] The 1st Defendant avers that she cannot admit or deny paragraphs in the Plaint with respect of how the Plaintiffs were treated by the deceased; alleged coincidences of facts that shows that they were the descendants of the deceased; and that the Plaintiffs being

his descendants would be entitled to bear his name and participate in his succession in accordance to law.

- [9] The 1st Defendant denies the Plaintiffs' averments that, as heirs to the deceased estate, they are entitled to a share of the estate under the principles of inheritance and that the deceased estate bounty consist of both moveable and immovable, both in Seychelles and elsewhere, which would further be identified through the process of tracing. The 1st Defendant puts the Plaintiffs to the strictest of proof of these averments. She further avers that these averments are baseless and purely a fishing expedition.
- [10] The 1st Defendant admits that she has been confirmed as Testamentary Executrix in CS 49 of 2019 but denies that the Plaintiffs have any interest in the succession of the estate.
- [11] The 1st Defendant denies averments in the Plaint in relation to her duties in law under Article 724 (4); 825; 827; 829 of the Civil Code and Practice Directions 1 of 1989 and avers that the Plaintiffs' averments are baseless, frivolous and vexatious.
- [12] The 1st Defendant objects to the issuance of an injunction to prohibit her from distributing the bounty of the deceased estate and denies that she would be acting contrary to law if she was to distribute the said bounty.
- [13] In the circumstances it is denied that the Plaintiffs are entitled to the reliefs claimed and the 1st Defendant prays that that the Plaint be dismissed with cost and for her to be released from the proceedings; and to make any such orders as the Court deems fit in the circumstances.
- [14] The 2nd Defendant admits that she is the surviving spouse of the deceased and that the 3rd to 5th Defendants are his legitimate children. They all have filed a common Statement of Defence in which they have raised a preliminary objection to the effect that the Plaintiffs have wrongly and illegally joined more than one cause of action in the same suit and, consequently, the Plaint ought to be set aside or struck off.
- [15] As to the merits, the death of the deceased is admitted. However, the Defendants deny that the Plaintiffs are late Mr Rene's biological and illegitimate children as they have not

been formally recognized by him, and neither have they been recognized in his last Will and Testament. It is averred further that the Plaintiffs have yet to undertake a DNA test to prove that they are, in fact, the biological children of the late Mr Rene.

[16] The Defendants admit that the 1st Defendant was appointed the Testamentary Executrix in the Will, and that the 2nd Defendant is the surviving spouse of the late Mr Rene. It is denied that the 2nd Defendant is a testamentary legatee of the estate of the deceased in the Will except that she is a legatee to personal chattels left by the late Mr Rene in his Will. They admit that the 3rd, 4th and 5th Defendants are the legitimate children of the deceased; however, they deny that the 3rd, 4th and 5th Defendants are testamentary legatees of the estate of the deceased. It is further denied that the 6th Defendant was born out of wedlock. The Defendants further aver that as the Plaintiffs put the 3rd, 4th and 5th Defendants to proof as to their legitimacy, in the interests of fairness, the parties should submit themselves to a DNA test.

[17] The said Defendants deny that the deceased treated the Plaintiffs as his children and that in law there are enough facts to establish that there is a relationship and parenthood between him and the Plaintiffs.

[18] They aver that the actions of the deceased towards the Plaintiffs were not of a father to his children but one of a man helping another person to get a good foundation, to enable them to be a successful individuals in the future, which is something he did with many individuals and that, although there may be writings emanating from the deceased, neither the deceased nor the Defendants were 100% sure that the Plaintiffs were his biological children. The 1st, 2nd, 3rd and 4th Defendants aver that their uncertainties are based on the fact that there were strong cultural tendencies in this country for certain women to have claimed to have given birth to a child for well to do men, in that they would with the hope that they make material, financial and social gains from him.

[19] It is further averred that in the 60s and 70s when the Plaintiffs were born, there was no scientific method of proving paternity. Consequently, it was very easy for a women to claim to have had the deceased's child as he was a man well known for his generosity of

pocket and they stood to gain power, standing and recognition in society as well as much financial and economic benefits from him.

[20] These Defendants then raised a Constitutional objection to Article 340 of the Civil Code. They aver that in Article 32 of the Constitution the State pledges to promote legal, economic and social protection of the family. Whereas, Article 340 of the Civil Code sets out a series of circumstantial evidence to prove paternity. The 1st, 2nd, 3rd and 4th Defendants aver that the Civil Code sets the threshold for proving paternity to be far too low. Consequently, they argue that the Constitutional rights of the 1st, 2nd, 3rd and 4th Defendants to the protection of family as enshrined under Article 32 of the Constitution are being threatened due to potential abuse by imposters who could claim paternity without DNA evidence.

[21] They deny the averments related to disguised donation and put the Plaintiffs to proof. Furthermore, they aver that the Plaintiffs will only be entitled to a share in the estate if it is proven that they are the biological children of the deceased. Further and in the alternative, the Defendants deny that the Plaintiffs will, at any rate, inherit on the basis of gifts *inter vivos* or *donations deguisees*, as according to them, none of transfers made by the late Mr Rene to the 1st, 2nd, 3rd and 4th Defendants qualified as *gifts inter vivos* or *donation deguisees*.

[22] They further deny the Plaintiffs' claim insofar as it claims that there were *gifts inter vivos* made by the deceased which exceeded the disposable portion of one fourth of the properties that he owned. In that regard, it is averred that the sale of the property B 1854 was between the late Mr Rene and his spouse, the buyer, who is not a reserved heir. At any rate, the Defendants aver that if the Plaintiffs intend to institute proceedings for reductions of the disposition made by the deceased, Article 26 of the Constitution would be violated, as it would prevent the 1st, 2nd, 3rd and 4th Defendants and the Deceased from peacefully enjoying their property. They argue that the right to own and dispose of one's property as one pleases is a fundamental charter right under Article 26 of the Constitution, which is directly contradicted by Articles 913, 915, 917, 918, 919 and 920 of the Civil Code. The

Defendants avers that it is imperative that this matter is referred to the Constitutional Court to be determined.

- [23] They make another averment of Constitutional contravention by claiming a breach of Article 32 of the Constitution. It is averred that the Plaintiffs' intentions to file a case for reductions in the disposable portion infringes the 1st, 2nd, 3rd and 4th Defendants' right as the State recognizes that it should undertake to promote the legal, economic and social protection of the family, which is enshrined and protected by Article 32 of the Constitution. The same objection is made with regards to Article 340 of the Civil Code, which they say allows the Plaintiffs to prove paternity through the low threshold of circumstantial evidence.
- [24] As a result, the 2nd, 3rd, 4th and 5th Defendants pray this Court to order the two Plaintiffs to undergo a DNA test to establish their paternity. In the event that the Plaintiffs refuse to undergo a DNA test, it is prayed to have the matter referred to the Constitutional Court as a referral under Article 46 (7) of the Constitution and to dismiss the Plaint with costs.
- [25] The 6th Defendant did not file any defence and submitted herself to the decision of this Court and the matter proceeded ex-parte against her.
- [26] In a Ruling of this Court dated the 16th December 2019, following hearing of legal submissions, this Court dismissed prayer I and II of the Amended Defence of the 2nd to 5th Defendants with respect to the making of a compulsory order of DNA testing upon the Plaintiffs and, in the alternative, referring the matter to the Constitutional Court for breach of the Charter by Article 340, 321, 323 and 324 of the Civil Code. Accordingly, before the Court at this juncture, only the prayer for dismissal of the Plaint in the Statement of Defence of the 2nd to 5th Defendants remains to be determined.
- [27] In the said Ruling the Court finds that the last page; 8th line from the top of the last paragraph the Court instead of writing the words "*Amended Statement of Defence of the 2nd, 3rd 4th and 5th Defendants*" wrote "*the Plaint*", this is evidently a typographical mistake and I therefore apply the "slip Rule" and correct it accordingly, so that the words

“the Plaintiff” are read as the *“Amended Statement of Defence of the 2nd, 3rd 4th and 5th Defendants”*.

EVIDENCE

- [28] The 1st Plaintiff, Garry Albert Camille, testified as follows. He lives in London, he said that he got his name after his father and that he was born on the 17th of July 1964. He is a businessman and runs a building company. He is married and has three daughters. His mother is Graziella Therese Camille, who is living in the UK not far from his home. His mother is a diabetic and has mobility issues. He has one sister named Veronique Shaw. Mr Camille testified that his father is Albert Rene, the former President of the Republic of Seychelles. Mr Camille believes that Albert Rene is his father for many years. He has heard it from the family. Mr Camille was informed of this fact by his mother, who informed him what a great mind he had and that he was also a barrister. Mr Camille testified that he also received Christmas cards and gifts from Mr Rene. When he became older he did his own research and discovered things that led him to admire Mr Rene, including the phenomenal things he did for Seychelles.
- [29] He had understood how his dad had met his mum in different conversation during Christmas and Easter gatherings at his mother’s place where such matters, memories, issues would come up over a glass of wine. According to him, his mother and father met either in 1958 or 1959 in Seychelles and then they travelled to the UK and there they lived in Stratham just outside London.
- [30] Mr Camille remembers from the age of 8 or 9 how he and his sister met Mr Rene in London on a few occasions at his where he was staying hotel. He has in his possession a photograph of Veronique and himself being in the company of his father taken at a hotel in London. They were picked up from school and brought to the hotel to see him. On one occasion they went to lunch and then to his room in the Savoy Hotel where several pictures were taken. In one of the pictures Mr Camille was lying on his father’s lap. Another picture that he remembered was taken in the company of his father and the ex-President James Mancham.

- [31] Mr Camille testified that his father would treat him like any father would do, such as hugged and kissed him, took them shopping, bought them gifts and lunches and he was generally pleased to see his children.
- [32] Mr Camille testified that he was aware as a child that his father had sent his mother 50,000 (fifty thousand) pounds and wanted his mother to use the money to return back with the family to Seychelles. However, since he had just started junior school, they could not come back. His mother came to Seychelles to discuss this issue with Albert. The money was used to buy a house for them in the UK as they were having a tough time and were renting a flat. Many other postal money orders were posted to Mr Camille and his sister by his father. According to Mr Camille, his mother loved his father up to his father's death. Further, according to Mr Camille, nobody in his family had ever informed him that he was never Albert's son.
- [33] He further testified that he knows David Savy, a son of Geva, a spouse of his father for over 18 years. Geva had written to him and his sister on many occasions, and she had been very kind to them. She would send to them Christmas cards. She had no doubts that he was the son of Albert Rene. Mr Camille further testified that he spoke to his father by phone after he got married in the year 2000. He stated that his father had phoned him twice, whilst he had phoned over more than 40 times.
- [34] He stated that his relationship with his father, however, took a downturn when the latter divorced Geva. Under cross-examination he stated that this was because of his new wife, Sarah Rene, and as a result, he could not even reach him by phone.
- [35] He remembered visiting Seychelles in 1986 on holiday when he met his father on two occasions at the State House and had dinner at his father's residence with Geva. He had a fabulous evening where he talked about his father and how her sons sons were doing. He had taken many photos, including some with his father at the State House, but they had been misplaced. During their meeting at the State House, they hugged and kissed and he gave his father some cufflinks from London and his father gifted him the golden Cartier pen that he was using at the time.

- [36] Years before his father's death, Mr Camille found out that his father had a medical problem with his lungs and had to travel abroad for treatment. His health deteriorated over the years. He was informed by David Savy that his father was gravely ill and wanted all his children by his bedside. He received a formal invitation to attend the funeral ceremony and ceremonial sitting of the Supreme Court. However, as Mr Camille had a medical problem himself, he could not come and was not present at Mr Rene's passing. He watched the funeral via YouTube.
- [37] The witness produced a number of exhibits, including a photograph of the deceased, with his handwriting at the back, where he had written, "*To my dearest children. Daddy. XXX*".
- [38] Under the cross-examination, Mr Camille gave his reason why he refused to undergo the DNA examinations. According to him, he does not trust Sarah Rene, and he questions where she obtained his father's DNA; and the very fact that she had the supposed DNA meant that she had premeditated his claim.
- [39] Veronique Shaw, the 2nd Plaintiff was born on the 27th May 1962 in Croydon England, she is a retired Cabin Crew of the British Airways. Her mother is the 1st Plaintiff's mother, Graziella Therese Camille. She was 88 years old at the time of her testimony and lived in Surrey, England.
- [40] Mrs Shaw testified that she had always known and claimed to be the daughter of the deceased. There had been no doubt to this fact, and she heard this from her mother and her mother's family. She had visited Seychelles many times over the years, possibly as many as 20 times. When she came over, she would visit her family and her father. The deceased had always welcomed her with open arms and they had a big relationship. Ms Shaw testified that she used to meet with Geva, her father's former wife, whom she referred to as "aunty Geva", regularly. However, after her divorce, less frequently. Geva was fond of both Gary and herself, caring to them and maintained correspondence with them for a long time. She has more than 60 letters from her, including postal orders that had come almost every month. In those letters there was constant reference to her father and his regards to them. In Seychelles she would sometimes stay with Geva and her

father at their house in *L'Exile*. She would visit her aunty Andree who had moved to Seychelles from the UK, her uncle, her grandmother on her mother's side and her mother's old friends. Ms Shaw had stayed with her aunty for about ten times when she was in Seychelles. Andree would treat her as family as her father's daughter. Andree was around when her mother was with her father and there was no doubt that she took it as such.

[41] Mrs Shaw's mother and Geva used to rent rooms with Louisa, her father's mother. As a result, when they were young her father, Geva and her mother were childhood friends and her mother went to school with her father's sister. When Mrs Shaw's father went to England to study, her mother was staying with her father's mother. In London her father got married to one Karen Hanly and the couple had a child. After that they separated and he came back to Seychelles and started a relationship with her mother. Later they came to live with her father in the UK. She remembered her first meeting with her father here in Seychelles when she was 18 years old; she stayed at his home with Geva for four days.

[42] Mrs Shaw produced the passport of her mother in evidence, which shows her departure from Seychelles to Nairobi and from Nairobi to England. She also produced her Birth Certificate, which does not show the name of her father. According to her, her parents had agreed that, as her father was still married, there was no need for him to put his name on her certificate.

[43] She further produced various photographs showing them sitting together with the deceased in England when they were children. She also produced a number of letters from Geva, which contained references to the deceased and the rest of the family. Some letters also referred to money transfer from her to the witness and her brother. The letters, though written by her, referred to the fact that they were sent by the deceased. According to her, the money transfers took place every three months. All in all, she would have received 3,000 (three thousand) pounds this way between 1975 and 1983.

[44] She received a letter from Geva containing a wedding photograph of the deceased and Geva, in which monetary gift to the witness and her brother were enclosed. The documents were produced in evidence.

- [45] The witness also received a Christmas card containing the words “*to my darling daughter*” signed by the deceased and containing monetary gift. The Christmas card was also produced in evidence.
- [46] She also produced a letter signed by Albert Rene, which contained money for her glasses. In the said letter Albert Rene makes reference to Mrs Shaw’s former letter that she had written to the deceased requesting for assistance in paying for her glasses.
- [47] Mrs Shaw further produced a letter that contained a chain and bracelet gifted to her by Geva and the deceased on the occasion of her 18th Birthday. It was also introduced in evidence. The bracelet was a gift given to Geva by the deceased and further bestowed by the latter to the witness. On the bracelet it is inscribed: “*To my darling with love, Albert*”. On the front there is the name “*Geva*”.
- [48] She testified that when she got engaged she was in Seychelles and she received a card for the occasion personally from Geva. After her engagement she and her husband often visited Seychelles on holidays and both of them were received with open arms by her and her sons and were invited to dinners.
- [49] From 1992 when her father divorced Geva the situation changed and their contacts became more limited because Sarah, his new wife, did not approve. As a result they met only at the State House in his office with occasional phone calls. In 1993 on a visit here, when she was leaving, her father called her at the airport to tell her goodbye.
- [50] She testified that when her daughter passed away in 2005, her father called her over the phone soon after and expressed his condolences. She is aware through conversation with the deceased that he had various properties, including on Reunion Island, La Digue, Praslin, Australia and Barbarons Mahe. She once went on a trip with her father on one of his boats.
- [51] In 2017 she met her father again, this time in his office and he was in a wheelchair and looked ill and weak and could barely breathe. A photograph depicting this encounter was produced in evidence. One month prior to the passing of the deceased she received a call from a friend informing her that he was not well and coming in and out of hospital. Then,

David Savy called her and informed her that her dad wanted all his children by his bedside. However, since she was travelling, she missed him by just one day. Nevertheless, she was involved in the funeral arrangements and related meetings with her siblings, including gatherings at Leslie Benoiton's house. Many siblings and Sarah Rene were present at her father's house. Mrs Shaw produced an order of service of the funeral, which included her photograph, as well as an invitation card to the funeral. During the funeral service, she was seated in the family area and was shuttled in the family bus.

[52] She testified that she knows her other siblings on her father's side, including Pandora, Christine, and Brigitte.

[53] According to her, she is the daughter of the late Albert Rene. There has never been any questions nor any doubts whatsoever from anybody in that regard. Most of her family referred to the deceased as her dad since she was born. Her father's name appears in her original passport and her marriage certificate.

[54] The next witness called by the Plaintiffs was Roderick Guy Stone. Mr Stone was called in order to testify as an expert witness on the subject of tracing and following proceeds of properties and to produce and testify on his report that he had undertaken in this case. Following a *voire dire*, the Court granted him leave to give his expert opinion. As Mr Stone's evidence relates in its entirety to the cause of action that has been struck out in this suit by the Court I find that it has no relevance and has to be disregarded.

[55] The Plaintiff closed its case following the testimony of Mr Stone.

[56] The 1st Defendant failed to appear in court for testimony, despite time and opportunities being given to her to testify either physically or through video-link from South Africa. The Court examined the facts being put forward for not testifying and it found that it was unreasonable and proceeded with the case without hearing her oral evidence. However, her counsel was allowed to produce the last Will and Testament of the deceased, in which he appointed the 1st Defendant as Executor.

[57] Mr Camille, Counsel for the Defendants, on the other hand, chose not to call his clients or any other witnesses in his case.

WRITTEN SUBMISSIONS OF COUNSEL

[58] Learned Counsel for Plaintiff and Defendants have filed written submissions, which were very helpful and are available for reference. The Court will not set these out here. All arguments both of law and facts have been carefully scrutinized, considered and are subject to determinations herein.

Preliminary Objections

[59] The learned Counsel for the 2nd to 5th Defendants has raised a preliminary objection under section 105 of the Seychelles Code of Civil Procedure. This provision is to the following effect:

“Different causes of action may be joined in the same suit, provided that they be between the same parties and that the parties sue and are sued respectively in the same capacities, but if it appear to the court that any of such causes of action cannot be conveniently tried or disposed of together, the court may, either of its own motion or on the application of the defendant, order separate trials of any of such causes of action, or may make such other order as may be necessary or expedient for the separate disposal thereof, or may order and of such causes of action to be excluded, and may make such order as to cost as may be just.”

[60] There had been a prior attempt to raise this objection *viva voce* during the course of the proceedings of this case. At this juncture this Court finds it apt to revisit this objection given that it has been formally raised in the pleadings, supported by authorities and submissions and responded to in the same manner by learned Counsel for the Plaintiffs.

[61] I have done a careful reading of section 105 of the Code and my interpretation of its provisions is as follows: there can be more than one causes of actions averred in a plaint. However, the cause has to be between the same parties, who are sued in the same capacities. The trial court, however, has a residual discretion to order for a separate trial of any such causes of action if the justice of the case calls for it.

[62] I am of the view that “cause of action” comprise every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the Court (see *Read v. Brown (1888) 22 Q.B.D. 128 per Lord Esher M. R. at p. 131*). The phrase comprises every fact which is material to be proved to

enable the plaintiff to succeed (see *Cooke v. Gill* (1873) L.R. 8 C.P. 107, per Brett J. at p. 108, and cf. *Buckley v. Hann* (1850) 5 Exch. 43 ; *Hernaman v. Smith* (1855) 10 Exch. 659 per Parke B. at p. 666, but as to where a cause of action arises, see *Distillers Co. (Biochemicals) Ltd. V. Thompson* [1971] A.C. 458, p.c., applying *Jackson v. Spittfall* (1870) L. R. 5 C.P. 542). The words have been defined as meaning "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person" (per Diplock L.J. in *Letang v. Cooper* [1965] 1 Q.B. 222 at p.942..."

[63] In upholding a *plea in limine* under section 105, the Supreme Court in *Camille and others vs Bayview Estate Limited and Others* (CS 16.2012) [2014] SCSC 173 (16 May 2014) held as follows:

“Evidently, in the instant suit, the alleged causes of action have arisen between three different parties, who seek different remedies against different defendants. The parties also sue and are being sued entirely in different capacities. Because of the mixing up of causes of actions, jurisdictions, remedies, parties and the difference in their capacities, it appears to me that the causes of action cannot conveniently be tried or disposed of together in the same suit.”

[64] The contention of learned Counsel in this case is that there are two causes of actions in the Plaintiff: the first one being an action *en recherche de paternite* founded on Article 340 (1) (b) of the Civil Code and the other an action based on reduction under Article 745 and ors.and Chapter III. of the same Code. Learned Counsel submits that whilst the 1st cause of action should properly be brought against the legal heirs of the deceased; the 2nd cause of action has to necessarily be brought against the Executor of the deceased estate in accordance with the Civil Code. According to learned Counsel, this is a clear breach of the rule of similitude of parties.

[65] In this case it is the position of both sides that there are indeed two causes of actions in the Plaintiff. The question left for the Court’s determination therefore is whether or not they can both survive given the facts and circumstances.

[66] According to Article 1025:

“The testator may appoint not more than three testamentary executors. Any executors appointed shall act as fiduciaries with regard to the rights of the persons entitled under the will, as provided by this Code, and also with regard to the distribution of the inheritance. The appointment of such executors shall be confirmed by the Court.”

[67] Article 1026 further provides:

“If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.”

[68] In this case the 1st Defendant was appointed as a testamentary Executor by the deceased in his Will pursuant to Article 1025. The said Defendant was not appointed under Article 1026 on the basis of an intestacy appointment of an estate consisting of immovable properties.

[69] The 1st Defendant’s duties as an Executor are spelled out in Article 1027, which are: *“to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be”*.

[70] Under Article 1029, the Executor is also bound to represent the estate in all legal proceedings, and shall act in any legal action the purpose of which is to declare the will null. The action *en reduction* in this case is clearly one of such actions.

[71] It is clear to this Court that, in the present case, the Defendants in the two causes of actions would have to by necessity be different due to legal necessity, albeit that the Plaintiffs can be the same persons in both causes of action. This is so because in the action *en recherche de paternite* the defendants have to be the legal heirs of the deceased, whilst in the action *en reduction* the defendant has to be the executor and not the heirs, as only an executor can represent an estate consisting of immovable property, as it is purported here.

[72] To my mind, therefore, the submissions of Counsel for the 2nd to 5th Defendants are correct and the joining of the two causes of actions offends section 105 of the Seychelles Code of Civil Procedure. Having come to this finding, I will use the Court's discretion under section 105 to exclude from the suit the action *en reduction* and maintain the action *en recherche de paternite*. The Plaintiffs are at liberty to bring a separate case based on the excluded cause. Due consideration has been given by the court to the possibility of splitting the case into two so that the action in succession be allowed to proceed against the 1st Defendant only. However, the court finds that this would be highly practical given the state and intricacies of the pleadings

Issue on the Merits

[73] The issue left for this Court's determination is therefore whether the evidence adduced has established on a balance of probabilities that the Plaintiffs had sufficient coincidence of facts indicating a relationship of decent and parenthood with the deceased. Coming to the remaining issue before the Court, the provisions of Articles 340 and 321 are relevant:

"Article 340

1. It shall not be allowed to prove paternal descent, except:

...

(b) When an illegitimate child is in possession of status with regard to his natural father or mother as provided in article 321.

...

(e) When the alleged father and the 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 father.

...."

"Article 321

1. *Possession of status may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.*

The principal facts are:

That that person has always borne the name of the father whose child he claims to be;

That the father has been treating him as his child and that, in his capacity as father, he has provided for his education, maintenance and start in life;

That he has always been recognised as a child of that father in society;

That he has been recognised as such by the family.

2. *Natural descent may also be established by the possession of status, both as regards the father and the mother in the same manner as legitimate descent."*

ANALYSIS AND DETERMINATION

[74] According to the authorities of *Quilindo & Ors v Moncherry & Ors* (SCA 29 of 2009) [2012] SCCA 39 (6 December 2012), *Esparon v Low Wah and Ors* (CS 63/2016) [2017] SCSC 444 (29 May 2017), *Mathiot v Mathiot, Executor of the Estate of Jupiter and others* (CS70/ 2012) [2013] SCSC 103 (20 September 2013), *Payet v Anderson* (1983) SLR 39, *Pillay v Lespoir* (1984) SLR 105 and *Larue v Eulentin* (1981) SLR 122, substantial and unequivocal independent corroborative evidence is needed to support a paternity claim pursuant to Articles 321 and 340 of the Civil Code.

[75] Although DNA evidence is not stated as one of the evidence which can prove paternity under Article 321, that Article does not exclude such evidence also. The Article only sets out the principal facts that may establish a possession of status providing there is sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong. Therefore, the DNA evidence is admissible and is highly probable, although, not produced in this case for reasons previously set out.

- [76] It is trite that pursuant to the provisions above, in order to establish paternity, one has to prove either possession of status, *concubinage notoire* or the provision of maintenance by the father and that in order to prove descent one has to additionally show either of the circumstances set out in Article 340.
- [77] The learned editors of *Baudry-Lacantinerie, Traité de Droit Civil*, 3rd Edition, Vol. IV, para. 463 of page 374, after stating that the principal facts which found "*possession d'état*" wrote that these can be divided under the three groups: "*nomen*", "*tractatus*", and "*fama*". It is further explained very clearly that it is by no means necessary that all of these facts should co-exist, nor is it meant that the listings of the facts under article 321 of the Code Napoléon be limitative. Applying Article 340 (b) of the Civil Code, the Court is of the opinion that it is essential for Plaintiffs to establish that during the lifetime of the deceased Plaintiffs enjoyed the *possession d'état* as above referred.
- [78] Demolombe, *Traité de la Paternité et de la Filiation*, 1881, para. 208, at page 217, citing by way of examples certain principal facts, write that it was not intended either to always require the meeting of the facts which it states nor to exclude the other facts also states that the definition of the possession of status leaves to the decider of facts the sovereign appreciation of the circumstances on a case to case basis. Therefore, for parentage to be proven by possession of status, it is not necessary for all these facts to coincide in order to establish possession of status.
- [79] In *Dalloz Code Civil Annoté*, verbo "*Preuves de la filiation des enfants légitimes*" at note 2 under Article 321 reference is also made to the fact that the law does not require the concurrence of all the facts listed in Article 321, and it does not exclude those facts, which are not mentioned in this Article.
- [80] The principal facts relied by the Plaintiffs under Article 321 in this case are as follows:
- That the father has been treating them as his children and that, in his capacity as father, he has provided for their education, maintenance and start in life;
 - That they have been recognized as such by the family. In reliance of the gateway provision of Article 340 the Plaintiffs further argued that their

conception occurred when their mother and father were notoriously living together as husband and wife; and that the alleged father has provided for or contributed to their maintenance and education in the capacity as father;

- That they have been recognised as such by the society.

[81] The Court has to determine whether or not there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between the Plaintiffs and the deceased whilst bearing in mind the abovementioned evidential constraints and requirements.

[82] Love, care and attention comes as a result of the parental bond that a father has towards his children. The stronger the parental bond, the greater is the proof that the man recognizes those children as his own. It is human nature to take care of one's own, especially one's blood line. In a man it stems from the acknowledgement of the fact that he is responsible for their births and therefore also responsible to help make them grow and have a start in life. In the absence of DNA evidence, establishing sufficient coincidence of facts was one of the way devised by the Code to piece together the paternal legitimacy of legitimate children. It is those external signs and conducts that a father would exercise towards a child that one looks for here.

[83] Having considered the entirety of the evidence before me, I find proven on a balance of probabilities that the deceased, the late France Albert Rene treated the Plaintiffs as his children and provided for the education, maintenance and a start in life. There exist overwhelming evidence both testimonial and material from both Plaintiffs and they are all uncontroverted.

[84] I find proven that Garry Albert Camille's middle name is that of the deceased first name. He lives in London, England, a city with closed connection to the deceased, where the latter studied to be a Barrister and lived in the early 1960s when Garry was born. His mother is Graziella Therese Camille a Seychellois who migrated to the UK from Seychelles via Mombassa Kenya with the young Albert Rene, with the hope of having a fresh start in life.

- [85] Though Mr Camille does not have very good memory of his early childhood he remembers Albert Rene. He received Christmas cards and numerous gifts from him, whether personally or through Geva Rene, who was then married to Albert. He obviously had no direct knowledge of how his father met his mother, but he learned parts of the story from close relatives and his own mother. Mr Camille came to understand how his father had met his mother during Christmas and Easter gatherings at his mother's place, where such matters, memories and issues were discussed over a glass of wine. According to him, his mother and father met either in 1958 or 1959 in Seychelles and then they travelled to the UK and there they lived in Stratham just outside London.
- [86] Albert Rene made it a point to see both Garry and his sister when he came over to England. When he was around 8 or 9 years old, Mr Camille remembered meeting Albert in London on a few occasions at his hotel where he was staying, along with his sister. He has in his possession a photograph of Veronique and himself being in the company of his father, taken at a hotel in London. They were picked up from school and brought to the hotel to see him. On one occasion they went to lunch and then to his room in the Savoy Hotel, where several pictures were taken. In one of the photographs, he was lying on his father's lap, and in another photograph that he remembered, he was in the company of his father and the ex-President James Mancham. His father would treat him like any father would: he hugged and kissed him, took them shopping, bought them gifts and lunches and he was generally pleased to see his children. The photograph of Garry sitting on his father's lap is the epitomisation of the affection that he held for him.
- [87] Mr Camille passes himself as a person who holds great admiration for what the deceased had done both for himself and this country as a President. In his own words when he became older he did his own research and discovered things that led him to admire Rene, including the phenomenal things he did for Seychelles. He keeps a picture of him in his home in England. This admiration no doubt grew as a result of love, care and affection he received from his loving but absentee father.
- [88] From Mr Camille's evidence, the Court accepts as a fact that the deceased sent his mother, Graziella, the hefty sum of 50,000 (fifty thousand) Pound Sterling. The money

was to be used to bring the family back to Seychelles. Eventually, as they could not come back due to children's schooling, it was used to buy a house for them to live in as a family in the UK. This is clearly an act of family maintenance. The deceased had somewhat abandoned them and life was hard in a rented flat. A new home gave them a fresh start in life.

[89] The Court also finds proven that many postal money orders were posted to him and his sister by his father, through Geva. Was it Albert or his wife, who through the her kind heartedness, that sent those monies to the Plaintiffs? Having considered the totality of the evidence, I find that the ultimate sender was no doubt the father and that his spouse was only a conduit for those mails. There are hints of the deceased in all the mails and he would sometime put his signs in them. These payments are proof of the father maintaining his children and providing for their education. This support went on a long way in bolstering the upbringing of the Plaintiffs as their mother seemingly had no other income other than working as a domestic worker.

[90] I find that the father-son relationship lingered between Gary and his father even later during the adulthood. Mr Camille visited Seychelles in 1986 on holiday and he met the deceased on two occasions at the State House and had dinner at his father's residence with Geva. When he met his father at the State House, they hugged and kissed and he gave his father some cufflinks as a gift from London and his father gifted him the golden Cartier pen that he was using at the time. The pen was seen by the Court and a photographic representation produced in evidence. After this occasion, he spoke to his father by phone after he got married in the year 2000. His father had phoned him twice, while he had phoned his father over more than 40 times.

[91] A common theme that is apparent from the testimonies of both Plaintiffs is the fact that their father's attitude towards them changed after he divorced Geva and married the 2nd Defendant, Ms Sarah Rene. Though he was attentive to them, he became distant. This might be based on the fact of the close relationship that Geva had with Graziella, both being childhood friends or Rene. Sarah Rene, on the other hand, had no such ties. Be this as it may, I accept that Mr Camille's relationship with his father took a downturn when

the latter divorced Geva. However, it does not serve to cast any doubt on the genuine love, affection and care between Albert Rene and the brother and sister, which lasted up to his death. Mr Camille could not attend his father's funeral and a formal Supreme Court ceremony due to a medical problem, though both him and his sister were invited.

[92] Under the cross-examination he gave his reason why he refused to undergo the DNA examinations. According to him, he does not trust Sarah Rene, and he questions where she obtained his father's DNA; and the very fact that she had the supposed DNA meant that she had premeditated his claim. The Court finds the position with regards to the DNA evidence tenable when it comes to the credulity issue, especially in the light of the on-going relationship that he had with Sarah Rene. Moreover, as stated previously, the DNA evidence in our law is but an aid, though of higher probable value.

[93] With regards to Veronique Shaw, again besides being recognised by her family as the deceased's daughter, there is overwhelming evidence that proves that Albert Rene had treated her as a daughter and, in that capacity, has provided for her education, maintenance and start in life. She received the same gifts, monies and favours from the deceased, whilst she was a child living with her mother and brother in London. This was either directly from Albert or through Geva. Ms Shaw also recounted how the deceased treated both of them with strong paternal affection when he came over for his business trips to the UK. She talked of the relatively lavish treatments that were offered to them and how these had positively affected them during their very impressionable years. I accept as proven that the money transfers to her took place regularly and all in all she would have received 3,000 (three thousand) pounds between 1975 and 1983. I find that the money orders that their father sent them had greatly assisted their schooling, livelihood and gave both her brother and herself a start in life, especially as they were initially living with a single mother, doing mostly menial jobs. The number of letters sent to Ms Shaw by Geva and Albert and the contents of the words and expressions of those letters also show that there was love and affection.

[94] Mrs Shaw received Christmas cards on Christmas days, Birthday cards and gifts on her birthdays and AN Engagement Ccard on the day that she got engaged. She also received

a wedding photograph of Geva and her father. These are personal and intimate signs and gestures that are acknowledged by the closest to one's heart. The gifts she received were also very personalised and intimate and came from the heart of both Geva and Albert Rene. Such signs of love and affections were not those of strangers but of people with close and deep personal connections. It appears that her father was present at highs and lows of her life, including upon the death of her daughter when Albert gave her a call in an attempt to bring comfort to a grieving mother's heart.

[95] Being a cabin crew member of the British Airways, Veronique got to travel to Seychelles regularly as a young woman. It is proved on a balance of probabilities that she visited Seychelles many times over the years, possibly as many as 20 times. When she visited, she would spend time with her family and her father. The deceased had always welcomed her with open arms and they had a very close relationship. Here in Seychelles she would also meet with Geva, whom she called aunty. She would sometimes stay with Geva and her father at their house at *L'Exile*. Once when she was here, she had forgotten to say goodbye and Albert, the President, had given her a call at the departure lounge, something that appeared to have touched her very much. They even had a boat trip together, when they went to the St. Anne Island. In 2017 she met her dad again, this time in his office and for the last time. He made a special effort to come and see her on that day and he was in a wheelchair sick and could barely breathe. It was to be their last moment together.

[96] Having considered the entirety of the evidence before me, I find proven on a balance of probabilities that the deceased the late France Albert Rene treated Veronique Shaw as someone very close to his heart, provided for her education, maintenance and a start in life. Looking at the evidence as a whole the Court is convinced that she would not have been what she is today without her father's support. This is sufficient to establish the possession of status for the purpose of Article 321 as read with Article 340 of the Civil Code.

[97] The Court will next consider whether the Plaintiffs, Gary and Veronique, have always been recognised as children of Albert Rene by the family of the deceased. Here,

especially in the context of this case, it is important for the Court to decide, as a preliminary issue, what is the “family” for the purpose of the last *alinea* of Article 321, namely “*That he has been recognised as such by the family*”. Is it referring to the family of the purported father or the mother of the child or both of them and/or together with the siblings of the child plaintiff? Article 321 is silent on this.

[98] This Court will give a non-restrictive meaning to this term as it appears that the intention of the Code is to allow the admission of the maximum relevant evidence concerning third parties’ views of the child-father relationship. The Code makes relevant and admissible the views of any members of society on how they perceived the relationship. If it permits the views of society to be one of the factors for the establishment of possession of status, it will more so include any members of the family, extended or not, who also happen to be members of the society and have a say on whether the Plaintiffs’ relationship with the deceased constituted that of a father and his children.

[99] Accordingly, the family would include Geva Rene, their step mother; her sons; their aunts and uncles and their other siblings on their father’s side. However, no such family members came to give their deposition of facts to show how they viewed the relationship between Garry and Albert. The testimony came from Garry himself.

[100] His evidence is somewhat self-serving and has to be treated with caution. I am conscious of the fact that it may be exaggerated or invented in order to bolster the credence of the Plaintiff’s story. However, having carefully listened to the witness and having examined his demeanour whilst under oath, I do not find any reason to disbelieve his evidence when it comes to how the rest of the family viewed the relationship between his father and himself. Moreover, on this issue I attached similar credibility to the evidence of the 2nd Plaintiff carrying out the same careful consideration. Having done this, I am further of the view that their testimonies independently support one another in material particulars when it comes to their relationship with the rest of the family.

[101] Having carefully considered the evidence before me, I have found that Geva, the stepmother of the Plaintiffs was very affectionate to both of them. She showered them

with gifts, monies and jewelleryes. She appeared very attached to them and their mother. She recognized both Gary and Veronique as being the children of the late Albert Rene.

[102] Next we have David Savy, he is somebody who appears to have been in constant communication with the Plaintiffs and was the one that had to sadly break the news to the Plaintiffs regarding the demise of their loving father. Mr Savy also clearly recognised the Plaintiffs as the children of Mr Rene.

[103] Next we have Plaintiffs' siblings on their father's side, including Sonny Benoiton, who treated the 2nd Plaintiff as one of theirs during their father's funeral ceremony. The 2nd Plaintiff was given a place to sit under the family tent, she travelled in the family bus and she participated in the family meetings with regards to the burial arrangements. Both Plaintiffs were also formally invited to the funeral by the family. The aunties of the Plaintiffs on the mother's side would tell them about how their parents met and how their relationship developed. The Plaintiffs' mother, who according to Gary loved his father until his demised, recognized that they had a father, Albert Rene. Accordingly, I find that the two Plaintiffs had been recognized by their family as the children of the deceased. Therefore, they have proved their possession of status even under this *alinea* of Article 321 of the Civil Code.

[104] No evidence has been adduced to prove that the society; either the United Kingdom or Seychelles has treated the Plaintiffs as the children of the deceased, accordingly this court finds this averment not proven. However, given that this is only one aspect of *possession d'etat*. Not proving this element is immaterial to this court's decision.

[105] The Defence of the 2nd to 5th Defendants is that the Plaintiffs are opportunistS that have come to partake in the wealth of the deceased, who was well known to be generous with his fortune. They also aver that it is common for women living and bearing children at the time that the Plaintiffs were born, to pass their offspringS as that of affluent and generous men so that they could have greater future prospect.

[106] The Court has considered this defence and finds that while human nature may indeed lead to such stratagems, this was not the case in this instance for two main reasons. The first

reason being the genuineness of the love and affection that both Albert and his family had for the Plaintiffs. If there were any doubts about their parentage to the deceased, their treatment would not have been so overwhelmingly affectionate, as in this case.

[107] Secondly, the defence is rebutted because I have found, as proved by the Plaintiffs, that there was as *concubinage notoire* between their mother and Albert at the time of their birth. A preponderance of facts that shows that the Plaintiffs' mother had lived notoriously with the putative father is another coincidence of fact that can prove paternity (Article 340 (1) (e) of the Civil Code).

[108] In the Seychelles Court of Appeal case of *Nicette v Marimba* (SCA 51 of 2019) [2022] SCCA 17 (29 April 2022), the court accepted the trial judge finding of *concubinage notoire* (living notoriously) out of the following facts:

“The appellant has never denied her relationship with the respondent and their concubinage notoire. That concubinage notoire does not have to amount to the parties cohabiting – it suffices that they conducted themselves as if they were living together ... In respect of the provisions of Articles 321 and 340 of the Civil Code, I find that the status of the child is established ... since the child’s Birth Certificate contains her father’s name and her father’s recognition of her in the deed of acknowledgment.”

[109] In this case, it is proven on a preponderance of facts that at the time the two Plaintiffs were born, Albert Rene and Graziella Therese Camille were living as husband and wife, first in Seychelles, and then for some time in England. Mrs Shaw testified that the young couple decided that their father shall not acknowledge them in their birth certificates because he was not divorced his first wife at the time, as a result they took their mother’s surname – Camille.

[110] Evidence of cohabitation between Albert and Graziella came from both Plaintiffs. Hence, I find that the couple living as husband and wife not only reduced the possibility of concoction regarding the Plaintiffs’ paternity by the mother, as it is being alleged by the Defendants, but also presents facts that in law assist in the establishment of parenthood.

[111] Therefore, I am satisfied that pursuant to Article 340, in addition to establishing possession of status with regard to their natural father as provided in Article 321 (Article

340 (1) (b)), the Plaintiffs further satisfied the Court their father and mother have notoriously lived together as husband and wife, during the period of Plaintiffs' conception (Article 340 (1) (e)) OF THE Civil Code

[112] The main Defence of the 1st Defendant is that she has no knowledge of the issues relating to the paternity of the deceased and that she is carrying out her duties as Executor fairly and in accordance to law. In this respect she does not contest or accept the plaint. This neutrality does not put her as an opponent to the claim of paternity, which is found by this court is this Judgment.

FINAL DETERMINATION

[113] For the reasons stated above, the Court is satisfied pursuant to the provisions of Articles 340 and 321 of the Civil Code that there is sufficient coincidence of facts indicating the relationship of descent and parenthood between the Plaintiffs and the deceased. Therefore, the 1st and the 2nd Plaintiffs are the natural children of the late France Albert Rene. The Court orders that Plaintiffs be so declared; and that the Chief Officer of the Civil Status rectifies their Acts of Birth by entering them as the children of the late France Albert Rene.

[114] The court makes no order as to costs.

Signed, dated and delivered at Ile du Port on 29th November 2023.

Govinden CJ