

SUPREME COURT OF SEYCHELLES

Reportable

MA290/2024

(Arising in CS25/2024)

In the matter between:

JOTHINATHAN NAIDOO
(Represented by Mr. Elizabeth)

Applicant

And

GEORGES MAHOUNUE
(Represented by Ms. Almeida)

Respondent

Neutral Citation: NAIDOO V MAHOUNE (MA290/2024) (arising in CS25/2024) (9th July 2025)

Before: A. Madeleine, J

Summary: Third Party Proceeding

Heard: Written Submissions

Delivered: 9th July 2025

ORDER

The Application is refused and stands dismissed.

RULING

Background

1. The Applicant herein (and Plaintiff in the main suit) has applied to this Court by way of notice of motion supported by Affidavit made on 20th November 2024 for the following orders –

- “1. Granting leave to the Applicant to add Ms. Theoline Pool as a third party to this action.
2. Directing that the Applicant’s Complaint be amended accordingly.
3. Granting such further and other relief as this Honourable Court deems just and equitable.”

2. The Applicant’s affidavit states that the Applicant and his wife, Jothinathan Bharati, owns one-third (1/3) undivided share in land parcel V2936. The Applicant is also the owner of adjacent land parcel V5842. The Applicant seeks access through land parcel V2936 to use land parcel V5842, and alleges that the Respondent herein (Defendant in the main suit) has impeded him in gaining such access. Upon investigation, the Applicant has discovered that, one, Ms Theoline Pool is the executrix of the remaining 1/3 undivided share in title number V2936. He believes that she is a necessary party to main suit as her involvement is crucial to the complete and effective resolution of the issues relating to access to title number V2936.
3. The Respondent opposes the application and filed an Affidavit in Reply made on 10th December 2024. In *limine litis*, the Respondent moves this Court to dismiss the application on the following grounds –
 - (1) the application and affidavit is bad in law because the Applicant cannot apply to the Court to add a third party to the main suit due to the fact that it is the improper and incorrect procedure; and
 - (2) the Applicant’s affidavit in support of the application is defective as it does not follow the legal requirements for a third-party application.
4. On the merits of the application, the Respondent concedes to the Applicant and his wife’s ownership of one-third (1/3) undivided share in parcel V2936 and as well as the Applicant’s ownership of adjacent plot no. V5842. The Respondent also states that the Applicant’s land parcel V5842 has direct access to the public road. Further, the Respondent has never prevented the Applicant from accessing V2936. The Applicant

has thus not suffered from any restriction of use of V5842. Furthermore, the Respondent has never impeded the Applicant from his access to V5842.

5. The Respondent also confirms that Theolin Pool was appointed executrix for and on behalf of Christa Mahoune who held the remaining one-third (1/3) undivided share in V2936 pursuant to will and testament of the late Christa Mahoune dated 16th October 2009. The one-third (1/3) undivided share of the late Christa Mahoune has to date, not been transferred onto the heirs.
6. Based on legal advice, the Respondent verily believes and states that the Applicant has failed to satisfy the Court as to how Theoline Pool is required as a third party to the main suit and the said application is improper, full of procedural flaws and as such bears no merit. Furthermore, it does not state the facts out of which the claim against the third party arises. As a result, the Respondent moves for dismissal of the application in its entirety with costs.

Submissions

7. The Court invited written submissions from the parties on the plea in limine litis raised by the Respondent, which were duly filed.¹
8. The Respondent submitted that the application filed by the Applicant is improper and incorrect, and relied on Order 16 of the English Rules of Supreme Court 1965 (R.S.C 1965) (White Book). It is submitted that Order 16 R.S.C 1965 is applicable in Seychelles by operation of sections 4 and 17 of the Courts Act and section 12 of the Evidence to the extent that our law do no provide sufficiently for the rules for third party procedure. Counsel referred the Court to two cases where the Supreme Court has applied Order 16 R.S.C 1965 namely *Bonne v Jase Construction* [2021]² and *Ian Davidson & Or v. Cerf & Surf Properties Limited* [2014]³ to join third parties to the main suit. However, in both cases and in terms of Order 16 R.S.C 1965, the application for leave to issue a third party notice was made by the Defendant and not the Plaintiff

¹ Respondent's submissions filed on 12th February 2025 and Applicant's submissions filed on 5th March 2025

² SCSC 8 MA 186 of 2020 Arising out of CS No. 62/2020

³ SCSC 303 MA 189/2014 (arising in CS No. 41/2014)

in the main suit. Counsel further submitted that in the present case, the proper procedure would have been for the Applicant to apply for the addition of the owner of the remaining one-third share in V2936 as a defendant to the main suit in accordance with sections 109 and 112 of the Civil Procedure Code. If despite these submissions, the court is minded to grant the prayers of the application, the Respondent submits that the affidavit in support does not fulfil the requirements of Order 16/2 (2) R.S.C 1965. It is stated that contrary to the said order, the affidavit do not contain the following information: the nature of the claim made by the Plaintiff in the main suit; the stage at which proceedings have reached in the main suit; and the nature of the claim made by the applicant or particulars of the question of issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based. Based on the above, the application should be dismissed.

9. The Applicant submitted that the Respondent's objections lack legal foundation as the inclusion of the executrix of the remaining one-third share (1/3) of V2936 is imperative for the proper adjudication of the matter, ensuring that all necessary parties are before the court. It is also submitted that the Respondent's plea in limine litis is misconceived and relied in support on the cases of *Medine v Vidot CS266/2004 (unreported)*, *Toumany and Anor v Veerasamy [2012] UKPC 13* and *Gill & Ors v Film Ansalt (SCA 28 of 2009) [2013] SCC*. It is also submitted that the doctrine of stare decisis as entrenched by clause 7 of the Civil Code makes it imperative for the Supreme Court to follow and not depart from decisions of the Court of Appeal. The court understands from these submissions that following the case of *Gill (supra)* the court the procedural lapse raised by the Respondent should not prevent the executrix from participating in the main suit. Since the executrix to an estate is the appropriate party to represent and defend the interests of the deceased's estate, and notwithstanding the Applicant having invoked the incorrect procedure, the Court has the discretion under section 112 of the Seychelles Code of Civil Procedure to add parties who ought to have been joined or whose presence before the court may be necessary to adjudicate all questions involved in the matter. It is further submitted that the addition of the executrix in the main suit is not a mere formality by a necessity which not allowed will result in procedural defects. According to the Application, justice demands that the estate be properly represented through its executrix and for the matter to proceed to its logical conclusion.

10. The Applicant herein has filed an application for leave to issue third party notice on Theoline Pool, who is the executrix to the estate of the late Christa Mahoune - the owner of the remaining undivided one-third share (1/3) in V2936.
11. Recourse may be made to third party procedure under Order 16, r.1 of the English R.S.C 1965 by operation of section 4 of the Courts Act: [Vide *Finesse v Banane* [1981] SLR103; *Chetty v Ah-Tive & Anor* [1976] SLR 199, 201; *Davidson & Or v. Cerf & Surf* (*supra*) and *Bonne v Jase* (*supra*)].
12. In terms of Order 16, r.1(1), it is a Defendant in an action, and who has entered an appearance, who may issue a third party notice with leave of the Court –

“ORDER 16

(R.S.C 1965)

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice (O.16, r.1)

1. – (1) Where in any action a defendant who has entered an appearance –
 - (a) *claims against a person not already a party to the action any contribution or indemnity; or*
 - (b) *claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff;*
 - (c) *requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already party to the action;*

then, subject to paragraph (2), the defendant may issue a notice in Form No. 20 or 21 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature or of the

grounds of the claim made by him or of the question or issue required to be determined.

(2)

(3)

(Emphasis added)

13. I consider that in both *Davidson & Or v. Cerf & Surf* (supra) and in *Bonne v Jase* (supra), the Supreme Court allowed the application by the Defendant(s) in the main suits to join a third party in the said suits.

14. I also consider the following provisions of the Seychelles Code of Civil Procedure –

“109. Who may be joined as defendants

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.”

112. Misjoinder, adding of parties, etc

No cause or matter shall be defeated by reason of the misjoinder or non joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.”

(Emphasis added)

15. It is clear that the Applicant, as Plaintiff in the main suit, has not invoked the proper procedure in moving the Court to issue third party notice on Theoline Pool. I am therefore in agreement with the Respondent's submissions on the first plea in limine that the Applicant's application is improper and incorrect. Based on this finding, the content of the supporting affidavit does not arise for determination.

16. I also agree with the Applicant's submission that the executrix to the remaining one-third (1/3) share of V2936, namely Theoline Pool, is a necessary party to the determination of the issues in the main suit. I add that the failure to join her as a Defendant in the main suit is not attributable to the Respondent or to the Court. That said, all is not lost for the Applicant to join the said Theoline Pool as Defendant in the main suit by invoking the correct procedure.

17. Based on the above, the prayers of the application cannot be granted.

Order

18. The application is refused and stands dismissed.

Signed, dated and delivered at Ile Du Port, Mahe this 9th day of July 2025.


A. Madeleine, J

