

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MC 67/2024

In the matter between:

YOUTLIE QUATRE

1st Applicant

JOUBERT QUATRE
(rep. by Mrs. Amesbury)

2nd Applicant

and

THE CURATOR
Mr. Danny Lucas
(rep. by Ms. Hermitte)

Respondent

Neutral Citation: *Quatre & Anor v The Curator* (MC67/2024) [2025] (13 June 2025).

Before: E. Carolus J

Summary: Vesting Order of property of absentees in Curator - Section 6(1) of the Curatelle Act, 2021.

Delivered: 13th June 2025

VESTING ORDER

The undivided shares in Title C1417 registered in the names of the absentees Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine are vested in the Curator pursuant to section 6(1) of the Curatelle Act, 2021.

RULING

CAROLUS J

- [1] The petitioners have filed a petition citing the Curator as respondent, praying for an Order “vesting in the Curator the real rights of the absentees Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine, pursuant to section 6(1) of the Curatelle Act, 2021 (“the Act”)”. They further seek an Order for the Land Registrar to register them “as owners of their half shares for being the heirs of the

late Philip Rameau Justin Marie". The petition is supported by an affidavit and other relevant documents exhibited thereto.

- [2] They aver that the late Philip Rameau Justin Marie ("the deceased") died intestate on 23rd May 2009, and that prior to his death, he and his siblings each inherited a share in land parcel C1417 from their mother the late Acely Brutus nee Marie. Exhibited to the affidavit is a Notice of First Registration dated 14th November 1985 addressed to Mrs. Acely Brutus nee Marie giving her notice that parcel C1417 had been registered with a qualified title in her name. The petitioners aver that upon his death, an Affidavit on transmission by death was registered vesting ownership of his share in parcel C1417 in Sylvie Anne Marie Madeleine, Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine.
- [3] The Affidavit on transmission by death sworn by Sylvie Anne Marie Madeleine on 12th August 2009 and registered on 18th August 2009 is exhibited. In the affidavit, she avers that upon the death of Acely Brutus nee Marie, her children (Philip Rameau Justin Marie, Rockville Paul Marie, Adrien Bertin Marie and Eustachie Christa Marie) each inherited undivided equal shares (1/4 shares) in parcel C1417; that Sylvie Anne Marie Madeleine, Chantal Telma Madeleine, Nicole Lidwyn Marie and Jean-Paul Gervais Madeleine are the children of Eustachie Christa Marie who married Willish Antoine Madeleine; and that Sylvie Anne Marie Madeleine, Chantal Telma Madeleine, Nicole Lidwyn Marie and Jean-Paul Gervais Madeleine are entitled to be registered as proprietors of a 7/32 share of parcel C1417, having inherited equal undivided shares of 1/2 of their mother's share in the property (the other half going to her husband Willish Antoine Madeleine), and equal undivided shares of Philip Rameau Justin Marie, Rockville Paul Marie and Adrien Bertin Marie's share in the property, who had all died unmarried, without issue and intestate. She avers that Willish Antoine Madeleine is entitled to be registered as proprietor of a 1/8 share of parcel C1417 having inherited a 1/2 share of his wife Eustachie Christa Marie's 1/4 share in the property. Also exhibited is a Certificate of Official Search in respect of Title C1417 dated 18th February 2022, showing the proprietors of Title C1417 to be Sylvie Anne Marie Madeleine (7/32), Chantal Telma Madeleine (7/32), Nicole Lidwyn Marie (7/32) and Jean-Paul Gervais Madeleine (7/32) and Willish Antoine Madeleine (1/8).

- [4] In their supporting affidavit, the petitioners aver that they were declared to be the children of the deceased by virtue of Supreme Court Judgment dated 26th September 2022, which is exhibited. They aver that they were intentionally excluded from the affidavit on transmission by death and consequently not registered as co-owners of parcel C1417.
- [5] The Petitioners aver that having been recognised as legal heirs of the deceased, they are entitled to a share of the property. Consequently, they applied to the Land Registrar to be registered as co-owners of parcel C1417, pursuant to section 89 of the Land Registration Act. In support the petitioners have exhibited an Affidavit sworn by them on 1st December 2022, praying the Registrar *“to rectify the register of parcel C1417”* so that they can each be registered as proprietors of an undivided $\frac{1}{4}$ share of the property, and the shares of Sylvie Anne Marie Madeleine (1/16), Chantal Telma Madeleine (1/16), Nicole Lidwyn Marie (1/16) and Jean-Paul Gervais Madeleine (1/16) and Willish Antoine Madeleine (1/4) can be rectified accordingly. Also exhibited is the Land Registrar’s reply dated 30th January 2023, stating that *“[T]he Land Registrar does not have the power under section 88(a) and (b) of the Land Registration Act, to rectify errors/ omissions found in the register or any instrument presented for registration, which would materially affect the interests of any proprietor, without their consent”*, and that the documents submitted by the Petitioners were being returned *“to allow [them] to attend to the necessary”*, presumably to obtain the consent of the registered co-owners.
- [6] The petitioners also applied to the Supreme Court in MC84/2023 for rectification of the land register pursuant to section 89 of the Land Registration Act. Sylvie Anne Madeleine, Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine were made respondents to the application, but the petitioners aver that all attempts to serve them failed. They aver that according to information received they are domiciled in Canada but their exact whereabouts are unknown. Further that although the petitioners attempted through their attorney, to liaise with the Department of Foreign Affairs to obtain their address for service, this has been in vain. They aver that having carried out due diligence, all indications are that they are absent from and are not legally represented in Seychelles. The Petitioner aver that their application for rectification of the land register could not proceed without service on the respondents, and the motion

for substituted service on them in MA29/2024 having been dismissed on 17th May 2024, the application in MC84/2023 was withdrawn on 5th June 2024. It is to be noted that, in MC84/2023, the address for service for the 1st, 2nd, 3rd, 4th and 5th respondents (Sylvie Anne Madeleine, Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine) was “C/o Lydiann Mathiot of La Gogue, Mahe, Seychelles”. According to the Return of Service for 22nd November 2022, service had been effected on the respondents by delivering a true copy thereof to Sylvie Madeleine on her own behalf as well as on behalf of the 2nd, 3rd, 4th and 5th respondents (Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine). Ms Vel who was standing in for Mr Hoareau, counsel for Sylvie Anne Madeleine, stated that she had been instructed that the 2nd to 5th respondents lived outside the jurisdiction in Canada, and enquired as to whether they had been served, whereupon Mrs Amesbury counsel for the applicants was advised to file a motion for service out of the jurisdiction.

- [7] The petitioners aver that they have further made a request to the Curator, through their attorney, by way of letter dated 1st July 2024, to apply to the Supreme Court for an Order to vest in the Curator, the real rights of Sylvie Anne Madeleine, Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine in parcel C1417, pursuant to section 5(1) of the Curatelle Act, 2021. They aver that the Curator has not only failed to do so but has neither acknowledged nor responded to their letter. They aver that it is imperative that such an Order is made for them to be able to proceed with the rectification of the Land Register so that they are not deprived of their inheritance.
- [8] The Curator Mr. Danny Lucas, has filed an Affidavit in Reply in which he states that his functions as Curator are set out under section 4 of the Act. He draws attention to section 4(2) of the Act which provides that “*the Curator shall, in the exercise of the functions under this Act, do all the Curator considers necessary to protect the interests of absentees, co-owners, and persons with succession rights.*”

[9] The Curator avers that on 1st July 2024, his office received a letter from the legal representatives of the petitioners requesting that he, in his capacity as Curator, apply to the Supreme Court for an order vesting the property rights of Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine in the Curator, in accordance with section 5(1) of the Act, the property being parcel C1417 situated at Anse Royale, Mahe. By way of reply, his office sent a letter dated 16th July 2024, to the petitioner's legal representative the Curator requesting that she furnish further information pertaining to the request. The letter is exhibited to the Affidavit as **Exhibit DL1**, and the information required as set out in the letter is as follows:

1. *Provide documents relating to ownership of parcel C1417*
2. *Provide information and documents or steps taken to identify the whereabouts and the status of Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine in Canada, Australia, Italy and England.*
3. *Have (sic) any contact been initiated/ pursued with the diplomatic representatives of Canada, Australia, Italy and England to provide assistance in the provision of required certificates and other desired information/ documentation?*
4. *When you aver that Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine has (sic) passed away, can they be declared an (sic) absentee? Has a succession opened?*
5. *If in the affirmative, can the siblings of the half blood in Seychelles be considered as heirs to her (sic) Estate. Can that give rise to different proceedings other than to have an allegedly deceased person declared an absentee?*

[10] The Curator also avers in his Affidavit that on the 09th of September 2024 his office wrote to the Ministry of Foreign Affairs requesting for information on the whereabouts of the individuals in respect of whom the petitioners had requested that an application be made by the Curator for their property rights to be vested in the Curator. The letter is exhibited as **Exhibit DL2**. A letter dated the 09th September 2024 was also sent to the Principal Secretary of the Department of Immigration and Civil Status requesting for information on whether or not the said individuals were in the jurisdiction. A follow up e-mail was further sent to the Principal Secretary on the 11th September 2024. The letter and e-mail are exhibited collectively as **Exhibit DL3**. He states that the Curator's office is yet to receive a response from the Ministry of Foreign Affairs and Department of Immigration and Civil

Status. Hence it is averred that the Curator cannot act without satisfying himself that all avenues have been explored so as not to affect the rights of the alleged absentees.

- [11] The Curator avers that he has been informed and believes, that in a case brought by the petitioners against the co-owners of the parcel C1417, one co-owner of the land namely Sylvie Anne Marie Madeleine was served a summons to appear for that matter and was represented by legal Counsel Basil Hoareau. Further that he believes that the co-owner is the sibling of Nicole Lidwyn Marie, Chantal Telma Madeleine, Jean-Paul Gervais Madeleine and the daughter of Willish Antoine Madeleine, being the individuals whose property rights the petitioners are seeking to be vested in the Curator. He expresses the belief that the said Sylvie Anne Marie Madeleine resides in the same jurisdiction as her other siblings, and her father and that her legal Counsel has knowledge of their place of abode, although he does not state the reasons for such belief.
- [12] The Curator avers that this Court, in its ruling dated 17th May 2024 in MA 29/2024 arising in MC 84/2023, dismissed an application for substituted service under sections 42 and 43 of the Seychelles Code of Civil Procedure made by the petitioners. In its ruling, this Court stated at paragraph [15] that in the circumstances, the Court finds itself unable to order substituted service on the respondents as requested and that the applicants must find other means to ascertain the whereabouts of the respondents. The ruling is exhibited as **Exhibit DL4**. He avers that he believes that if contact can be made to Sylvie Madeleine, then contact would also be made to the other siblings, who would thereafter no longer be considered as absentees. It is to be noted that Sylvie Madeleine was served and represented in MC84/2023 but that the other respondents in that case were not able to be served as their whereabouts are unknown.
- [13] The Curator concludes by stating that, in the circumstances the office of the Curator requires more time and further information before coming to a decision whether to act under section 5 of the Act. He therefore prays that this Court provides the necessary order to the petitioners to ascertain the location of the co-owners so that all the rights of the interested parties are protected.

- [14] Further to the filing of the Affidavit in Reply of the Curator, the Court decided to await the response of the Ministry of Foreign Affairs and Department of Immigration and Civil Status to the Curator's requests for information. This was provided at the sitting of this Court of 4th March 2025. By email dated 13th January 2025, the Ministry of Foreign Affairs informed the Curator's office that, "[U]nfortunately, due to strict Canadian privacy laws, [our Honorary Consul in Canada] is unable to confirm with the Canadian government whether these individuals are in Canada." On his part, the Principal Secretary for Immigration & Civil Status Department, by letter of 5th December 2024, sent the "Travel History" of Sylvie Anne Madeleine and Chantal Telma Madeleine. These show that Chantal Telma Madeleine whose nationality is shown to be Canadian travelled to Seychelles on 18/10/2014 from Abu Dhabi and from Seychelles to Canada on 14/11/2014. Sylvie Anne Madeleine whose nationality is shown to be Seychelloise travelled to and from Seychelles on the following dates: 29/06/2012 to 15/08/2012; 18/10/2014 to 14/11/2014; 10/08/2017 to 04/09/2017; 13/10/2021 to 17/11/2021; 30/11/2021 to 11/05/2022; 22/03/2023 to 12/10/2023; 19/10/2023 to 29/10/2023; 05/11/2023 to 15/03/2024; and 15/03/2024 to 02/04/2024. On the last trip she travelled from Canada to Canada. In his letter the Principal Secretary for Immigration & Civil Status Department, states that they do not have any travel records for Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine.
- [15] I take note that Ms Vel, when standing in for Mr Hoareau counsel representing Sylvie Anne Madeleine in MC84/2023 at this court's sitting of 22nd November 2023, stated to the Court that her instructions are that the 2nd to 5th Respondents in that matter Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine, live outside the jurisdiction in Canada. Given that she was representing Sylvie Anne Madeleine, it is probable that this information was obtained from her. This, together with the Travel Histories of Sylvie Anne Madeleine and Chantal Telma Madeleine, make it likely that the two of them are residing in Canada. It seems that Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine have not travelled to Seychelles in the recent past hence the lack of records as to their movements to and from Seychelles. In respect of them, there is only Ms Vel's statement that they live in Canada. However I note that following Ms Vel's statement, attempts to locate Chantal Telma Madeleine, Nicole

Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine proved unsuccessful.

[16] *In this Court's Ruling in MA29/2024 for substituted service, I stated at para [13] that "[...] the applicants have no knowledge of the whereabouts of the 2nd to 5th respondents [...]"* and further that substitution for service of notice, by advertisement or otherwise, as may seem just under section 52 of the Seychelles Code of Civil Procedure ("SCCP") presents difficulties given that *"the applicants do not even know which country the 2nd to 5th respondents are living in"*. This is because at the time, in addition to Ms Vel's statement, the Court only had the email of the Seychelles Consul in Canada in which he confirmed that he neither knew nor had heard of Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine, giving the impression that they were not in Canada. The Seychelles Consul in Canada now states that they are *"unable to confirm with the Canadian government whether these individuals are in Canada"* because of *"strict privacy laws"* in that jurisdiction. They are neither confirming nor denying that Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine are in Canada. At most there is only a likelihood that they are residing in Canada. There is no concrete information in that regard and even if they were taken to be in Canada, their exact location remains unknown, making contact with them impossible.

[17] The present application is for the interests of Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine in C1417 to be vested in the Curator under section 6(1) of the Act. Section 5 of the Act provides for the making of an application by the Curator to a judge for a vesting order in respect of vacant succession, unclaimed property or property belonging or accruing to an absentee, for such property to be vested in the Curator. It provides that:

5. (1) *Whenever the Curator has reason to believe that there is a vacant succession, unclaimed property, or any property belonging or accruing to an absentee, the Curator shall apply to a Judge for an order to vest that vacant succession, unclaimed property or property of the absentee in the Curator.*
- (2) *The order shall be granted as of course, upon the ex parte petition of the Curator supported by affidavit that diligent inquiry has been made and that the Curator or other*

deponent believes that the succession or property for which the order is claimed is vacant or unclaimed or belongs to an absentee as the case may be.

(3) The Curator shall, if the succession has sufficient funds, notify the order by publication in 2 consecutive numbers of the Gazette and a newspaper published daily in Seychelles.

[18] Section 6 provides for the situation where the Curator fails to make such application. It provides:

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

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

[19] The terms “absentee”, “unclaimed property”, “vacant estate” and “vacant succession” are defined as follows in section 2 of the Act:

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

“unclaimed property” means any property in Seychelles whose owner cannot be ascertained;

“vacant estate” means a vacant succession and includes unclaimed property;

“vacant succession” means the succession of a deceased in respect of whom there is reason to believe that he or she died possessed of property in Seychelles, whether the property is ascertained or not, and that the deceased died intestate and without heirs in Seychelles;

[20] It is clear that the shares of Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine in C1417 are not “unclaimed property” as the owners of such shares are known. Such shares also do not fall under the definition of “vacant succession”. It is clear however that Chantal Telma Madeleine, Nicole Lidwyn

Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine are all “*absentees*” as defined under the Act as they are “*absent from and not legally represented in Seychelles*” and are “*entitled to property in Seychelles*” namely undivided shares in C1417;

[21] Under section 6(2) of the Act, before making a vesting order, the Curator must be called upon to show cause why such order should not be made. I am mindful of the Curator’s obligation under section 4(2) of the Act to, in the exercise of his functions, do all that he considers necessary to protect the interests of absentees, which I note continues even after a vesting order has been made. He has also stated that he cannot act without satisfying himself that all avenues have been explored so as not to affect the rights of the alleged absentees. In his reply he prays for an order of this Court for the petitioners to ascertain the location of the co-owners so that all the rights of the interested parties are protected. In my view, the petitioners in the present case have done all they could to ascertain the exact whereabouts of the respondents with no success. Although in MC84/2023 Ms Vel appearing on behalf of Mr Hoareau, counsel for Sylvie Anne Madeleine stated that they live in Canada, all that the petitioners have been able to confirm through diplomatic channels is that Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine may or may not be living in Canada. In my view, the Curator has not shown cause why a vesting order as applied for by the petitioners should not be made. It is further relevant that, once a vesting order has been made, an interested party may apply for a divesting order.

[22] It is further my view that an order under section 6(1) of the Act (vesting in the Curator the undivided shares in C1417 of Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine) is necessary for the protection of the rights of the applicants, as required under section 6(2) of the Act, in that they are entitled to a share in C1417 as the heirs of their late father Philip Rameau Justin Marie, which they are further entitled to have registered in their names, upon the proper application being made. They are unable to do so as they are not able to ascertain the whereabouts of all interested parties.

[23] Accordingly, I make an Order vesting the undivided shares in C1417 registered in the names of Chantal Telma Madeleine, Nicole Lidwyn Marie, Jean-Paul Gervais Madeleine and Willish Antoine Madeleine, in the Curator in accordance with section 6(1) of the Act.

[24] The petitioners have also prayed for an order of this Court for the Land Registrar to register the petitioners as owners of their half shares for being the heirs of Philip Justin Marie. It is my view that such Order can only be made after the Land Registrar has made the appropriate entries in the appropriate Register, upon the proper application complying with the relevant legal provisions, being made either to this Court or to the Land Registrar. Furthermore, after the making of a vesting order, the Curator has to comply with certain formalities, and has to be given time to do so.

[25] This Order is to be served on the Curator and the Land Registrar.

Signed, dated and delivered at Ile du Port on 13th June 2025



E. Carolus J