

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

CS 53/2024

**JEANNE D'ARC CONTORET
MONIQUE SOPHIA JONES
ODILE DICK
GEORGE DICK**

(rep. by Karen Domingue)

Plaintiffs

Versus

**ROLNA DOMINIQUE DICK
SOLINE SAMONA ANNACOURA**

(rep. by Karine Dick)

Defendants

Neutral Citation: *Contoret and Ors v Dick and Anor* (CS53/2024) [2025]
(14th May 2025).

Before: Pillay J

Summary: Plea in limine

Heard: By way of submissions

Delivered: 14th May 2025

ORDER

The pleas in limine are left on file, pending the motion to amend.

RULING

PILLAY J:

- [1] It is not in issue that the Plaintiffs are the siblings of the first Defendant and the second Defendant is the daughter of the first Defendant and niece of the Plaintiffs.
- [2] It is also not disputed that the Plaintiffs and the first Defendant's mother, Sophie Alexia Dick, passed away on 28th March 2021.

- [3] It is further not disputed that prior to her death, the late Sophie Alexia Dick made a last Will and Testament dated 3rd March 2021 wherein she bequeathed her property Title V581 to the first Defendant and appointed the second Defendant as the Executrix of her Estate, which appointment was confirmed by the Court on 21st June 2021.
- [4] However, the Defendants disputed the claim with regard to the validity of the Will and raised pleas in limine to the effect that:
- (1) The Complaint is wrong in form as it should have been brought against the estate of the deceased represented by an executor and not against the 2nd Defendant in her personal capacity.*
- (2) The Complaint ought to be dismissed in accordance with section 92 of the Seychelles Code of Civil Procedure as it is frivolous or vexatious and does not disclose any reasonable cause of action against the Defendants.*
- (3) The Complaint ought to be dismissed in accordance with article 913 of the Civil Code of Seychelles Chapter 33 as there is no issue of declaring a will null and void since any disposition in a will that is contrary to article 913 is subject to reduction only.*
- [5] Learned counsel for the Defendant submitted that under the former Civil Code, there was no freedom of disposition but there was a system of forced heirship where testators were constrained to leave portion of their property to their heirs and the other portion which they could dispose of freely. She submitted that the 2nd Defendant who was appointed as the executrix properly executed her functions and duties by complying with the wishes of the testator. Learned counsel submitted that her job is completed and ceases to exist as the property is now vested in the heir.
- [6] Learned counsel further submitted that the remedies sought by the Plaintiffs cannot be obtained firstly because the executor did not bring an action to declare the Will null and the second Defendant is not an owner of parcel V581. She argues that there is therefore no cause of action against the second Defendant as a result of which the Court should dismiss the Complaint in accordance with section 92 of the SCCP.
- [7] In terms of the plea that there is no issue that pursuant to Article 913 of the Civil Code disposition in a Will is only subject to reduction she argues that the Plaintiffs have not

pleaded that the gift to the first Defendant is subject to reduction but on the contrary have pleaded that the gift is null and void. She relies on the cases of *Hoareau v Hoareau (1984) SLR 151* as well as *Contoret and Anor v Contoret (1971) SLR 257* for her argument that a gift in excess of the disposable portion is subject to reduction and not a declaration that the Will is void.

- [8] Learned counsel additionally referenced *Desaubin & Ors v Sedwick (SCA 12 of 2012) (2014) SCCA 20 (14 August 2014)* and *Laura Berlouis and Ors v Ogilvy Berlouis & Ors CS 74/2021* reported 2021 as authority for the proposition that there is no cause of action against the first and second Defendants.
- [9] Learned counsel for the Plaintiffs' position with regard to the plea that the Plaint should be dismissed in accordance with section 92 of the Seychelles Code of Civil Procedure (SCCP) is that their Plaint is serious, genuine and based on the distribution of the disposable portion of the estate of the Deceased. Learned counsel submitted that the Plaint meets the threshold of a reasonable cause of action and thus it should not be dismissed. Learned counsel relied on the case of *Elizabeth v President of the Court of Appeal (2010) SLR 382* with regard to the meaning to be ascribed to the term "frivolous and vexatious".
- [10] She further relied on the case of *Lotus Holding Company Ltd v Seychelles International Business Authority (121 of 2010) [2010] SCSC 19 (29 July 2020)* wherein a "vexatious proceeding" was defined as "...two or more sets of proceedings in respect to the same subject matter which amount to harassment of the defendant in order to make him fight the same battle more than once with the attendant multiplication of costs, time and stress."
- [11] Learned counsel also relied on the case of *Anna Mazzorchi v International School of Seychelles (SCSC) 2020, 2022* wherein Judge Dodin held that "a plaint is frivolous if it has no reasonable chance of succeeding and is vexatious if it would bring hardship on the opposite party to defend against an unnecessary and inevitably unsuccessful claim and if the claim has no chance of success, it is an abuse of the process of the Court."
- [12] In reliance on the above cases learned counsel submits that the Plaint is neither frivolous nor vexatious as there have not been any previous Plaint filed by the Plaintiffs against the

Defendants pertaining to this subject-matter. She submitted that the Plaintiffs have the right to assert their claims as lawful beneficiaries of the Estate of the Deceased.

[13] As regard the plea that the matter should have been brought against the Executrix, learned counsel submitted that the argument raised by the Defence is misconceived. It was her submission that the words used in Article 1026 means that the Executor must be cited as a representative of the Estate if there is an action seeking a declaration that a Will is null and void and not that the Executor must be the one to bring the action. She submits that the second Defendant must represent the estate in all legal proceedings.

[14] As for the third plea that an action that is contrary to Article 913 is subject to reduction only, learned counsel submitted that by the use of the words “to the extent” and “insofar” in paragraph 4 and paragraph 7 it is clear that the Plaintiffs are not requesting that the whole Last Will and Testament be declared null and void but only the part that falls afoul of Article 913. Learned counsel argued that what is in fact sought is a reduction of what the first Defendant is entitled to.

[15] Learned counsel added that should the Court find that the words “insofar as” does not properly reflect their request for a reduction that they be permitted to amend the Plaint.

[16] The question to be answered is what is the cause of action of the Plaintiffs?

[17] The Plaintiffs’ cause of action is pleaded at paragraph 4 as follows:

4. *The Last Will and Testament of the Deceased is null and void to the extent that it bequeathed Title V581 to the 1st Defendant, when the Deceased left behind 7 children and she was not empowered to disinherit her 6 other children.*

[18] Effectively the claim by the Plaintiffs is that the Deceased gifted the first Defendant property in excess of what is permissible in law. It is a claim that seems to be grounded in Article 913 of the Civil Code of Seychelles which provides that:

Gift inter vivos or by will shall not exceed one half of the property of the donor, if he leaves at death one child; one third, if he leaves two children; one fourth, if he

leaves three or more children; there shall be no distinction between legitimate and natural children except as provided by article 915 - 1.

Nothing in this Article shall be construed as preventing a person from making a gift inter vivos or by will in the terms of article 1048 of this Code.

[19] The remedy the Plaintiffs seek is for a declaration that the Will is declared null and void or alternatively that the property is returned to the hotchpot per paragraphs 6 and 7 below:

6. *The Plaintiffs are desirous that the Last Will and Testament of the Deceased is declared null and void insofar as all the bequests which is made solely to the 1st Defendant by the Deceased.*

7. *In the alternative the Plaintiffs seek a declaration that the transfer of Title V581 by the 2nd Defendant to the 1st Defendant is illegal and the Plaintiffs seek an order that the 1st and 2nd Defendants return the property to the Estate of the Deceased.*

[20] In the case of **Desaubin and others vs Sedwick (SCA 12 of 2012) [2014] SCCA 20 (14 August 2014)** wherein “it was admitted by both parties that the deceased died of cancer and that there was no attempt on his life or a defamation as outlined in Article 727” Twomey JA held that “the full rigours of the forced heirship provisions of the law of Seychelles has to apply. Article 731 of the Civil Code states in no uncertain terms that:

“Succession shall devolve upon the children and other descendants of the deceased... (our emphasis).”

Her Ladyship went on to conclude that;

Hence the Will of the testator can only be given effect within the confines of the law. In this respect Article 920 which states that at the opening of the succession, dispositions exceeding the disposable portion shall be reduced will apply.

[21] The decision in ***Desaubin*** is in line with the decision in ***Contoret and Anor v Contoret (1971) SLR 257*** wherein Sauzier J held that “the sale ... cannot be declared null and void and of no effect” but rather that it is on the death of Mrs Contoret that the Plaintiffs has “a

right of action for the reduction of the donation if such donation exceeded the 'quotite disponible'”

- [22] According to the cases of *Contoret* and *Desaubin* in such circumstances where a gift in excess of the disposable portion has been made, the proper action should be one for reduction. It cannot be one for declaration that the Will is null and void.
- [23] Learned counsel argued that the words used in the Plaintiff indicate that Plaintiffs are not seeking for the whole Will to be declared null and void but only for the offending part and as such are seeking a reduction. It is noted that in her submissions in making reference to the use of the word “insofar” counsel mistakenly referenced paragraph 7. It should be paragraph 6 which is reproduced above.
- [24] According to the Merriam-Webster dictionary “insofar as” means “to the extent or degree that”. “To the extent” means “the degree to which a subject or other matter extends”. Clearly this is in line with the argument counsel makes, that the request of the Plaintiffs is not for the whole of the Will to be declared null and void but only the part that offends Article 913. In my view therein lies the problem. The words used, “insofar as” as well as “to the extent” qualifies the demand for declaration that the Will is null and void. It clarifies that the demand is not for the whole Will to be declared null and void but the offending part. However, the demand still remains for a declaration that the Will is null and void.
- [25] That said, it is noted that the principles of forced heirship have been brought out in paragraph 4 though not elucidated properly. It noted that learned counsel has requested that should the Court not agree that the words used conveyed a request for reduction then that the Plaintiffs be allowed an opportunity to amend.
- [26] It must also be noted that the matter is not brought against the second Defendant as the Executrix to the Estate of the Deceased. For all intents and purposes she is sued in her personal capacity inspite of the fact that in paragraph 5 of the Plaintiff the Plaintiffs plead that:

In accordance with the Last Will and Testament of the Deceased, on 31st March 2023 the 2nd Defendant had her appointment as Executrix of the Estate of the

Deceased registered and proceeded on the same date to transfer Title V581 on the sole name of the 1st Defendant.

[27] It is further noted that the Defendants were not given a chance to address on the issue of a possible amendment to the Plaint. On that basis therefore, and in the interests of justice this Court will allow the request of the Plaintiffs to file a motion to amend.

[28] With that said the pleas in limine are left on file pending the motion to amend.

[29] Each party shall bear their own costs.

Signed, dated and delivered at Ile du Port on 14th May 2025

