

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA 156/2024

(Arising in CS07/2024)

In the matter between:

Garry Albert Camille
(rep. by Ms. Almeida)

1st Applicant

Veronique Ricki Shaw
(rep. by Ms. Almeida)

2nd Applicant

And

Marie May Kolsch
(rep. by Mr. Revera)

1st Respondent

Sarah Zarquani Rene
(rep. by Mr. Laporte)

2nd Respondent

Louisa Carmelle Rene
(rep. by Mr. Laporte)

3rd Respondent

Ella Setareh Rene
(rep. by Mr. Laporte)

4th Respondent

Dawn Elsa Rene
(rep. by Mr. Laporte)

5th Respondent

Pandora Rene
(Unrepresented)

6th Respondent

Neutral Citation: *Camille & Anor v. Kolsch & Ors* (MA156/2024 arising in CS07/2024)
[2025] (27th August 2025)

Before: A. Madeleine, J

Summary: *Application for Interlocutory Injunction*

Heard: Written Submissions

Delivered: 27th August 2025

ORDER

The 1st Respondent is prohibited from distributing any of the assets of the estate of the late France Albert Rene to any of the heirs or any other beneficiaries under the last Will and Testament of the said late France Albert Rene, pending the final determination of the main suit CS07/2024 or without the consent of this Honourable Court.

RULING

MADELEINE, J

Background

- [1.] On 29th November 2023, the Supreme Court per Govinden CJ in case *CS91/2019 Camille & Anor v Kolsch & Ors* declared that the 1st and 2nd Applicants herein (Plaintiffs in the main suit: *CS07/2024 Camille & Anor v Kolsch & Ors*) are the natural children of the late France Albert Rene who died, testate, in Seychelles on 27th February 2019.
- [2.] Following this declaration, on 17th January 2024 the Applicants herein (and Plaintiffs therein) filed a plaint in the registry of Supreme Court – *CS07/2024 Camille & Anor v Kolsch & Ors* – against the 1st Respondent in her capacity as executrix to the estate of the late France Albert Rene (the “deceased”) and against the 2nd to the 6th Respondents in their capacities as beneficiaries of the will of the deceased (the “main suit”). The 1st, 2nd, 3rd, 4th, 5th and 6th Respondents are also the defendants in the main suit.
- [3.] In the main suit, the Applicants aver, inter alia, that having been declared the natural children of the deceased they are entitled to a portion of his estate. They also aver that part of the deceased’ succession consist in immovable property. Although excluded from the will of the deceased, they are entitled to ‘*a share of the estate under the principle of reduction of inheritance and reserved portion of the Estate*’.
- [4.] The Applicants seek the following orders in the main suit –
- i) *That the reserved portion is reduced so as not to exceed the permitted portion for disposition by the deceased*
 - ii) *A declaration pursuant to Article 754 and 757 of the code that the Plaintiffs have the same rights as the legitimate children in the succession and the thick in equal shares and per head from the reserve portion of the estate of the deceased*
 - iii) *to all the that the first defendant makes Full disclosure to the plaintiff of all documents and papers including court orders relating to the appointment of herself as executrix of the deceased’s estate and all documents 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*
- iv) To order that the first defendant disclosed to the plaintiff all the transactions including but not limited to transfers of movable and immovable property in relation to the deceased assets both real and personal that have taken place since her appointment as executrix*
 - v) to order that the first defendant disclosed to the plaintiffs the whereabouts of all assets both movable and immovable owned by the deceased in the last 20 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 defendants*
 - vi) to order the first defendant provides to the plaintiffs a full inventory of all the assets of movable and immovable property owned by the deceased or held by others on trust for the deceased and all shareholdings held by the deceased either solely or in the joint names of the deceased and the second defendants and all the other defendants in action CS 37 of 2019 and or the third parties*
 - vii) To order that the first respondent be restrained from disposing of any assets owned by the deceased to any of the defendants in action CS 37 of 2019 or any third parties without the order of this court consenting to such disposal*
 - viii) to make such orders that the court sees fit*
 - ix) to order that the first defendant pays the cost of this suit.”*

[5.] The 1st to 5th Respondents (Defendants in the main suit) filed almost identical statements of defence, alleging *in limine* that the plaint offends the requirements of the Seychelles Code of Civil Procedure, fails to disclose a cause of action against the 1st Respondent (1st Defendant) as executrix and circumvents the curator’s supervisory mandate over executors. In relation to the 2nd to 5th Respondents (2nd to 5th Defendants), it is pleaded that the plaint does not disclose a cause of action for the reserved portion. On the merits, the respective statements of defence generally deny the averments of the plaint including the Applicants’ entitlement to, and the extent of, the deceased ‘succession.

[6.] The 6th Respondent was served with the plaint in the main suit and the injunction application outside jurisdiction, but failed to put in appearance in either matter. Thus, the main suit and the current application are proceeding *ex-parte* against the 6th Respondent.

Interlocutory Injunction Application

[7.] The Applicants now seek an order of interlocutory injunction against the 1st Defendant/Respondent not to distribute any of the assets of the estate of the deceased to

the heirs in the will or to any other beneficiaries pending the final determination of the suit and/or without the consent of this Honourable Court.

- [8.] The reasons for the application are stated in the affidavit of the 1st Applicant (also made on behalf of the 2nd Applicant) made on 24th May 2024 before Notary Public in England duly apostilled under the Hague Convention¹. In brief, the 1st Applicant states that a prima facie case has been set out in the main suit and therefore there is a serious question to be tried therein. Namely, –

“8.1.1. whether the Court must right the wrongs of the Will by varying it to secure my and the Second Applicant’s respective share of inheritance *lawfully due to us according to the laws of succession; and*
8.1.2. *grant the reliefs sought in CS07/2024.*”

- [9.] The 1st Applicant also states that *“if the injunction is not granted the 1st Respondent/1st Defendant will proceed to distribute the assets under the Will, resulting to the Second Applicant and I losing our lawful entitlements to our shares in the Deceased’s estate and thus would cause irreparable harm which cannot be cured by an award for damages as such the award will never carry the same sentimental value.”*

- [10.] It is further stated that the balance of convenience favours the interlocutory prohibitory injunction: harm will be caused to the Applicants if the order of injunction is not granted, the Applicants have already suffered injustice by having been left out in the Will and do not currently benefit equally to the heirs under the Will and their rights have already been breached by their exclusion from the Will. If the order of injunction is not granted and the 1st Respondent/1st Defendant proceeds with the distribution of assets to the heirs of the deceased mentioned in the will, it would prejudice the Applicants’ claim in the main suit.

- [11.] All Respondents, through counsel, indicated that they object to that grant of the order of injunction. The objections of the 2nd to 5th Respondents are contained in the Affidavit in reply made by the 2nd Respondent and filed on 5th November 2024. No Affidavit in reply has been filed on behalf of the 1st Respondent.

¹ Hague Convention of 5th October 1961

[12.] Thus, the court proceeds to determine the application on its merits and submissions filed.

[13.] The parties submitted adequately on the injunction application. Their written arguments have been fully considered by the Court although not reproduced herein.

Law and Analysis

[14.] In terms of section 304 of the Seychelles Code of Civil Procedure (“SCCP”) the Supreme Court may grant orders of injunction to restrain a defendant in a main case from the repetition or continuance of a wrongful act or the breach of contract or an injury of a like kind, arising out of the same contract or relating to the same property or right. Further, in terms of sections 5 and 6 of the Courts Act, the Supreme Court has “*all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England*”² and equitable jurisdiction³. Thus, in deciding whether to grant such equitable remedies, the Supreme Court should also be guided by the decisions of the Courts of England: *D’offay v Attorney General* (1975) SLR 118; *Laporte & Anor v Lablache* [1956-1962] S.L.R 274.

[15.] In determining whether an applicant has made out an adequate case for an interlocutory injunction, Courts in this jurisdiction have consistently applied the guidelines laid down by the House of Lords, per Lord Diplock, in *American Cyanamid v Ethicon Ltd* [1975] AC 396.⁴ These guidelines are as follows –

- (i) *Whether there is a serious question to be tried in the main case?*
- (ii) *Whether if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would not be adequately compensated by an award of damages for the loss he would have sustained because of the defendants*

² Section 5 Courts Act;

³ Section 6 Courts Act;

⁴ Vide: *Laporte & Anor v Lablache* [1956-1962] S.L.R 274, *Pest Control Services Limited v Gill & Or* [1992] SLR 177, *Delorie v Dubel* [1993] SLR 193, *Natalie Lefevre v Beau-Vallon Properties* MA154/2018 (arising CC8/2017), and *Surfer’s Paradise Self Catering Chalet Ltd & Anor v BGM Accountants & Anor* (MA 255 of 2022) [2022] SCSC 1088 (9 December 2022)

continuing to enjoy what was sought between the time of the application and the time of trial?

(iii) *Whether the balance of convenience lies in favour of granting the order of injunction?*

(iv) *Whether there are special cases?*

[16.] In *Exeter Trust Company v Indian Ocean Tuna Limited* (253 of 2009) [2010] SCSC 89 (26 May 2010), the Supreme Court, per Karunakaran J, held that –

“[I note] in matters of interlocutory injunctions, the Court must be satisfied prima facie that the claim is bona fide, not frivolous or vexatious; in other words, that there is a serious question to be tried vide: American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 at p. 510. Unless the materials available to the court at the hearing of the application for an interlocutory injunction, disclose that the petitioner has a real prospect of succeeding in his claim at the trial, the court should not go on to consider whether the balance of convenience lies in favour of granting or refusing the interim relief that is sought. In considering the balance of convenience, the governing principle is whether the petitioner would be adequately compensated by an award of damages, which the respondent would be in a financial position to pay, and if so, the interim injunction should not be granted. Where there is doubt as to the adequacy of remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo....”

(emphasis added)

[17.] Ex-facie the pleadings, I am satisfied that pursuant to an order of the Supreme Court made on the 29th of November 2023 in case CS 91/2019, the Applicants have been declared the natural children of the late France Albert Rene. On the basis of this declaration, the Court in the main suit will be called upon to determine whether despite their exclusion in the will of the late France Albert Rene which became applicable in 2019, the Applicants are entitled to a share in the reserved portion of his estate and to the other reliefs sought in accordance with the law. I consider that this is indeed a serious question to be tried in the main case. I also consider that if the order of interlocutory injunction is not granted and the 1st Respondent proceeds with distribution of the

dispositions of the will *pendente lite* which includes an interest of immovable property, the interests or right of the Applicants in the succession of the deceased will be rendered unenforceable and nugatory in the event the Judgment in the main suit is delivered in favour of the Applicants.

[18.] I therefore grant the application and make the following order.

[19.] The 1st Respondent is prohibited from distributing any of the assets of the estate of the late France Albert Rene to any of the heirs or any other beneficiaries under the last Will and Testament of the said late France Albert Rene, pending the final determination of the main suit CS07/2024 or without the consent of this Honourable Court.

Signed, dated and delivered at Ile Du Port, Mahe on this 27th day of August 2025.

A. Madeleine, J