

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 178/2017**

**(Arising in MC86/2012)**

[2018] SCSC 618

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**1. WILLIAM JOSEPH RAMKALAWAN  
2. WILNA MARIE CECILE ATHANASE**

Plaintiffs

versus

**1. CLEMENCE NIBOURETTE  
2. LUCILLE DIDON**

Defendants

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Heard: 9 April 2018, Submissions 16 May 2018.  
Counsel: Ms. Alexandra Madeleine for the Plaintiffs  
Mr. Guy Ferley for the First Defendant  
Mr. Bernard Georges for the Second Defendant

Delivered: 28 June 2018

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**JUDGMENT**

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**M. TWOMEY, CJ**

**Background and Pleadings**

[1] Wix Ramkalawan died in the UK in June 2009 ((hereinafter the Deceased) leaving behind a wife, a partner and four children, two in Seychelles and two in the UK.

- [2] In 2012, the Plaintiffs, his children in Seychelles filed a plaint in the Supreme Court in which they claimed that they were his legitimate and reserved heirs and challenged his Will in which the First Defendant had been made his sole legatee.
- [3] In a judgment by consent entered on 11 November 2015, the Court declared that the Deceased's children were entitled to the reserved portion of his succession and that within a month of the judgment by consent, the First Defendant would return to the hotchpot any monies from the succession and provide a full statement of accounts of the succession together with a statement of all property found in the UK. It was further agreed that upon the inventories of the Deceased's estate being completed the Defendants in their capacities as joint executors of his succession would distribute the Deceased's succession.
- [4] It is the Plaintiffs' case that this undertaking was not complied with and that the Defendants are in contempt of court and should be held as such by the court.
- [5] The First Defendant in her counter affidavit averred that at the time of the judgment by consent she had agreed to render accounts in her capacity as co-executor and as she was at the time negotiating compensation for land acquired from the Deceased by the government.
- [6] As a result of constant harassment from the Plaintiffs and because of her advanced age, the government agreed to deal with the heirs separately. She received SR1, 750, 000 for her share of the Deceased's estate and the rest of the heirs continued to deal with the government.
- [7] There was nothing else with regard to the Deceased's estate about which to render accounts. She had purchased Parcel V1517 from the Deceased some fifteen years prior to his death. She had lived with the Deceased both in England and in Seychelles for a total of thirty-five years as his partner until his death.
- [8] The Second Defendant also filed an affidavit in November 2017 which she claimed that she was appointed co-executrix to the Deceased's Estate but was principally looking after the rights of Tina and Eddy Ramkalawan, the Deceased's children in the UK and heirs to his succession.

[9] She agreed that she had not rendered accounts in relation to the property in the UK as had been undertaken under the judgment by consent. She stated that she had asked Tina and Eddy Ramkalawan to provide her with an inventory of such property which she attached to her affidavit.

[10] The First Plaintiff in a further affidavit in response to that of the Second Defendant averred that by reason of her failure to render accounts of the properties in the UK, no decision could be taken with regard to the distribution of the Deceased's succession.

[11] He disputed the format of the inventory and averred that there was no supporting documentation of the same. He further disputed the accuracy of the inventory and averred that the property had only been transferred to the Deceased's wife in 2010 after his death.

### **The Evidence**

[12] The First Plaintiff testified on his behalf and in representative capacity for the Second Plaintiff.

[13] He repeated the averments made in his affidavit that the First Defendant had failed to meet her undertakings under the judgment by consent. He stated that the Second Defendant had withdrawn SR57, 000 from his father's bank account on 20 January 2010 and had not distributed it as was her duty. Further, the Deceased's wife had transferred his father's property onto her name on 14 September 2010. He had received no account of his father's bank account in the UK.

[14] His father had movables in the house at Forêt Noire, which was occupied by the First Defendant but he had received no inventory of those items.

[15] In cross-examination, he stated that he knew of no expenses incurred in relation to the estate. He was not aware that the Deceased's land at Praslin had been valued and fees charged in respect of the same. He was also not aware that different lawyers had been retained to claim compensation for the acquisition of the property by the government and that fees were also paid to them. He was also not aware that the First Defendant was his

father's partner. When his father got sick he returned to England to his wife and when he died it was his wife and child who returned with the ashes to Seychelles.

[16] He admitted that he and the Second Defendant, his sister, had been paid SR2.8 million in respect of their share of compensation for the acquisition of his father's property on Praslin but stated that that was through his own interventions as co-executor and not through the efforts of the other co-executors.

[17] He did not agree that the property in England had not been transferred but that rather it had been registered in the name of the Deceased's wife in absolute ownership on his death under the English property law rules relating to joint tenancies.

[18] The First Defendant stated that she was confirmed as the executrix of the Deceased's estate on 30 October 2009 and subsequently Mr. Wavel Ramkalawan was substituted as executor. This was later revoked by the court and both Mr. Ramkalawan and the First Defendant appointed as joint executors on 30 March 2012. In December 2012 Mr. Ramkalawan was given leave to withdraw as joint executor and subsequently the 2<sup>nd</sup> Defendant substituted.

[19] She had lived with the Deceased for thirty five years in the UK and then in Seychelles. She bought the house in Forêt Noire in 1994 and there was nothing in it when she moved in. When the Deceased died she withdrew all the money from his account and had used it to pay bills. She paid the surveyor and Mr. Lucas for their services from this money.

[20] She did not accept that when they have moved from England the Deceased had also brought his possessions with him. She agreed that she had not made an inventory or kept records of expenses relating to the Deceased's estate. She agreed that the valuation of the property on Praslin was not a necessary expense. She agreed that she had failed in her duty to disclose withdrawals from the Deceased's bank account.

[21] The Second Defendant explained that she had stepped in as co-executrix to represent the heirs in the UK that is, Tina and Eddie Ramkalawan. They had undertaken to provide a statement of the movable and immovable property in the UK under their control.

[22] They had explained in an email that the house in the UK had been held in joint tenancy with their mother, the Deceased's wife. She produced an affidavit sworn by the Deceased's son, Eddie Ramkalawan to this effect. Attached to his affidavit is an inventory of the Deceased's property in UK. There was nothing in his bank accounts at his death.

[23] She admitted that she had not complied with the judgment by consent by not rendering accounts of the properties in England within the time stipulated but that her hands were tied as she did not receive the information from the Deceased's children, Tina and Eddie Ramkalawan.

[24] She had not of her own written to the Banks in the UK to ascertain the correctness of the statement made by Eddie Ramkalawan.

### **The Law**

[25] There are two aspects of the law which is of relevance in this case - those provisions relating to the duties of an executor and the provisions of Seychellois law with regard to contempt proceedings.

[26] Insofar as the duties of an executor are concerned, Articles 1025, 1027 and 1028 of the Civil Code of Seychelles provide in relevant part that:

*"Article 1025: ... 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.*

*Article 1027: The duties of an executor shall be 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...*

*Article 1028: The executor, in his capacity as fiduciary of the succession, shall also be bound by all the rules laid down in this Code under Chapter VI of Title I of Book III relating to the functions and administration of fiduciaries, insofar as they may be applicable."*

*“The Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England”.*

[32] It is settled law that this provision has imported into the laws of Seychelles the common law of England. In this respect the courts of Seychelles recognise and maintain the common law concept of contempt of court. As a court of record, it has an inherent power to punish for contempt, whether criminal or civil and as it has been said: “A court without contempt power is not a court” (Lawrence N. Gray, *Criminal and Civil Contempt: Some Sense of a Hodgepodge*, 72 ST. JOHN’S L. REV. 337, 342 (1998) and the power of contempt “is inherent in courts, and automatically exists by its very nature” (Ronald Goldfarb, *The History of the Contempt Power*, 1 WASH. U. L. Q. 1, 2 (1961).

[33] Indeed, the term contempt of court is a misnomer (see *Attorney General v BBC* (1981) AC 303, 362) and poorly explains the purpose of such proceedings. In *Morris v Crown Office* [1970]1 All ER 1079 at 1087, [1970]2 QB 114 at 129, Salmon J explained the objects of contempt proceedings thus:

*“The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.”*

[34] In *Mancienne v Government of Seychelles* (2004-2005) SCAR 161, the Court of Appeal citing Lord Ackner in *Attorney General v Times Newspapers Ltd and another* [1991]2 All ER 398 (HL) and Bowen LJ in *Re Johnson* (1888) 20 QBD 68 explained that the term was “inaccurate and misleading, suggesting in some contexts that it exists to protect the dignity of the judges.” It also cited Bowen LJ in *Johnson v Grant* 1923 SC 789, 790 who stated that :

*“The phrase “Contempt of Court” does not in the least describe the true nature of the class of offence with which we are here concerned ... The offence consists in interfering with the administration of the law; in impeding and preventing the course*

*of justice ... It is not the dignity of the Court which is offended – a petty and misleading view of the issues involved – it is the fundamental supremacy of the law which is challenged.'*

[35] In general terms, civil contempts consist in disobedience to judgments and court orders; and criminal contempts consist in conduct impeding or interfering with the administration of justice or creating a risk of such impediment or interference (see The Green Book-The Civil Court Practice Contempt of Court 2018 Volume 2, Part III).

[36] In *Linyon Demokratik Seselwa v Gappy & Ors* (MA 266/2016 arising in MC 86/2016 and MC 87/2016 ) [2016] SCSC 615 (24 August 2016), Karunakaran J in making a distinction between civil and criminal contempt stated:

*“The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised including the nature of the relief and the purpose for which the sentence is imposed.*

*The purpose of civil contempt is to compel the defendant to do thing (sic) required by the order of the court for the benefit of the complainant. The primary purpose of criminal contempt are (sic) to preserve the Court’s authority, and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial or compensatory and for the benefit of the complainant but if it is for criminal contempt the sentence is punitive to vindicate the authority of the Court ...”*

[37] It must be stated, however, that although contempts have followed this classic distinction, the two classes have converged (see in this respect *Daltel Europe Ltd v Makki* [2006] EWCA Civ 94). The basis for contempt orders is the strong public interest in ensuring obedience to court orders generally. As was held by the UK Court of Appeal in *JSC BTA Bank v Solodchenko & Others* [2011] EWCA Civ 1241, [2012] 1 WLR 350, committal for contempt is first and foremost a sentence which is in the public interest to uphold the authority of the court and to serve as a deterrent.

### **Applying the law to the present case**

- [38] In respect of the present case, clearly a civil contempt, the Plaintiffs have averred that the Defendants have committed a contempt of court by failing to abide the judgment dated 11 November 2015.
- [39] The Defendants had clear duties in their role as executors. These statutory duties were more or less reproduced in the judgment by consent which fixed a date for the completion of the executorship, namely that by 11 December 2015:
- [1] The First Defendant would return any income derived from the succession and provide a full statement of accounts of the succession.
  - [2] The Second Defendant would provide to the co-executors a statement of all property found in the UK.
  - [3] The First Plaintiff and the Defendants in their capacities as the executors to the succession of the Deceased, would after compliance with the above clauses distribute the Deceased's succession to his heirs.
- [40] The contempt action brought by the Plaintiffs is in regard to these general and specific duties.
- [41] With regard to the First Defendant, Mr. Ferley has submitted, relying on *Serret v Attorney General* (2012) SLR 209, that the First Defendant must be given every opportunity to explain why she should not be held in contempt. In the present case, he submitted, she had sufficiently explained why she should not be held in contempt.
- [42] Insofar as the Second Defendant is concerned, Mr. Georges has conceded that the judgment by consent was not complied with but submitted that the Second Defendant only stepped in as executor to assist the UK heirs and is only mentioned in the judgement by consent in her representative capacity and is neither a principal nor the person with knowledge of the UK assets. Further, he submitted, it was never intended that the UK assets if existent would be distributed. In any case the inventory reveals that there were no assets in the UK and it could therefore not be said that the distribution of the estate could have been held up by the failure to render accounts.



- [43] In further submissions, he states that the acts of the Second Defendant only amount to technical non-compliance and not a deliberate and intentional violation of the court's dignity, repute and authority to amount to contempt, which in any case has already been purged by the submission of the inventory. In this context he relies on the authority of *Fakie NO v CCHII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), a South Africa Court of Appeal case in which the court explored the standard of proof applicable in civil contempts. That court's approach is similar to the common law approach that since civil contempt may result in the contemnor being sent to prison, then the standard of proof should be proof beyond reasonable doubt (*In Re Bramblevale Ltd.* [1970] 1 Ch.).
- [44] Although, the convergence between civil and criminal contempt that I refer to above (see also Paragraph 37 supra) certainly implies that the standards of proof in both types of contempt are the same, I am not convinced that the Court should go as far as exploring the reasons for the contemnor's breach of its orders. Civil contempt is a strict liability offence; all that must be proven is that the order was served on the contemnor and it was breached. The penalty imposed is tempered depending on the explanation given by the contemnor for non-compliance.
- [45] With regard to the First Defendant, I am not satisfied with her explanation for non-compliance. The evidence she submitted, namely that she withdrew all the money from the Deceased's bank account to pay bills in relation to the estate is not supported by the documentary evidence. The invoices produced are post the withdrawal of the money: the account was closed in January 2010, the invoice from the Quantity Surveyor is dated May 2013; the payment to her lawyer is dated 2018 but does not indicate that it was in respect of services relating to the Deceased's estate. Clearing the estate's kitty without supporting documentation of the monies expended and not recording the purpose of such expenditure is just not acceptable.
- [46] Too long have executors in Seychelles been under the impression that their executorship means they have a personal right to the estate's property.
- [47] Insofar as the Second Defendant is concerned, she has admitted non-compliance with the judgment. Her explanation, if I understand it correctly, is that hers was a technical non-

compliance and that abiding the judgment would have amounted to nothing really as there was nothing to distribute nor would she have had powers to so in England.

- [48] This begs the question why enter into such an agreement knowing it be to be ineffectual and then claim good faith in subsequent proceedings. Moreover, the Second Defendant has not produced any evidence of the bank accounts being closed in England and the closing balances. She only relied on the say so of Tina and Eddie Ramkalawan. Similarly, she accepted their say so that there was no immovable property in the estate as the house in Greenford, Middlesex had been in joint tenancy and had passed by survivorship to the Deceased's spouse. That may well be the case but it is certainly not supported by necessary documentation to satisfy the duty to render accounts and distribute the estate as she was wont to under the judgment (see paragraph 5 of the consent judgment).
- [49] Orders of the court are not menus from which items are selected. Nor is it up to an executor to select which statutory duties she must carry out and which to not perform. Statutory duties are meant to be complied with as are orders of the court. Lest it be not clear, consent judgment entered as judgments of the court have the equivalent force of a judgement delivered by the court itself.
- [50] Hence, the Defendants should not have entered their roles as executors as lightly as they did. Their duties relate to property rights and are very serious duties which are scrutinised by the court. Both Defendants had to make inventories, and render accounts and the First Defendant has a duty to wind up the estate. Whether they perceive their duties as technical is neither here nor there. They both failed in their duties and continue to do so.
- [51] Sanctions for disobedience of court orders are primarily designed to coerce the contemnor into obedience.

### **Decision and Orders of the Court**

- [52] In the circumstances, I find both Defendants in contempt of court. They are ordered to render full accounts of the succession of Wix Ramkalawan within three months hereof, failing which a fine of SR25, 000 will be imposed on each of them.

[53] The First Defendant is further ordered to pay the liabilities of the succession and distribute assets, if any, after accounts have been rendered, and in any case not later than 30 December 2018 failing which suffer a further fine of SR25, 000.

Signed, dated and delivered at Ile du Port on 28 June 2018.



**M. TWOMEY**

**Chief Justice**

