

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2022/0025

BETWEEN:

OTHONIEL JASON FONTINELLE-ALCEE

Claimant

And

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Colin Foster with Mr. Horace Fraser of Counsel for the Claimant
Mrs. Karen Bernard and Mr. George K. Charlemagne, Attorney General's
Chambers of Counsel for the Defendant

2023: February 13;
2024: May 22.

JUDGMENT

- [1] **INNOCENT, J.:** The claimant is the illegitimate son of his deceased father (the 'deceased'). The claimant alleged that from the time of his birth he resided in the same household with the deceased and his mother. The claimant chronicled his life experience with his father.
- [2] The deceased had been married prior to the claimant's birth. In the course of his previous marriage, the deceased would have fathered a daughter who is his only legitimate child. The deceased was divorced sometime prior to the claimant's birth and did not remarry.
- [3] The claimant claims to be entitled to a share in the estate of the deceased. He complains that the law of succession in Saint Lucia as it presently stands disentitles him to succeed to his father's estate on the grounds of his illegitimacy.

- [4] As a result, the claimant is aggrieved by the provisions of article 579(6) of the Civil Code¹ (the 'Code') which defines the term "single man" as a man who has never been married. The claimant also appeared aggrieved by the fact that his sister, being the legitimate child of the deceased was the only child of the deceased entitled to a grant of administration in the deceased's estate.
- [5] The foundation of the claimant's challenge to the provisions of article 579(6) of the Code also concerns the definition of "single woman". According to the claimant, based on the definition of "single woman" in article 579(6) of the Code, an illegitimate child of a single woman was capable of inheriting.
- [6] According to the defendant this meant that the provisions of article 579(6) of the Code operated disproportionately or discriminatorily against illegitimate children like himself in the case of a "single man" as defined by article 579(6) even though the father of an illegitimate child had fathered that child subsequent to his divorce.
- [7] Substantially, the claimant's contention, summarised from his pleaded case was that 579 of the Code was discriminatory and contravened his rights guaranteed to him under section 6 of the Constitution in so far as it results in his deprivation of property. According to the claimant, article 579 of the Code limited his father's freedom of expression under section 10 of the Constitution and discriminated against his father on the basis of sex.
- [8] The claimant also took the view that article 579 of the Code operated discriminatorily towards him and his father to the extent that it deprived both of them the rights guaranteed to them under the Constitution. In his view, the effect of article 579 of the Code was to punish his father's status for having children out of wedlock even though he was divorced and single at the time that he was born.
- [9] Ultimately, the claimant adopted the posture that both himself and his father were deprived of their right to the protection of the law and equality before the law

¹Cap. 4.01

guaranteed to them under the Constitution which has a direct consequence on his right to inherit from his father's estate.

- [10] On the foregoing premises, the claimant sought the following declarations and orders pursuant to the court's powers under section 16 of the Constitution, namely:
- (1) A Declaration that Article 579 Of the Civil Code of Saint Lucia although amended is repugnant to Sections 6, 10 and 13 of the Saint Lucia Constitution;
 - (2) (2) A Declaration that the definition, at Article 579(6) of the Civil Code of Saint Lucia, given to the terms "single man" and "single woman" is discriminatory and repugnant to Section 13 of the Constitution of Saint Lucia 'Protection From Discrimination on the Grounds of Sex' as it seeks to promote unequal treatment between men and women and unequal treatment between the children of Saint Lucia in that, by giving to women a more generous interpretation of the definition 'single' than that given to men, children born out of wedlock to a married man or a man who has been married and divorced forfeit their rights to inherit their father's estate, whereas children born out of wedlock to a woman are able to inherit their mother's estate;
 - (3) A Declaration that Article 579 is repugnant to Section 6 of the Constitution of Saint Lucia 'Protection From Deprivation of Property' as it deprives a man who has been married and divorced from succeeding his estate to a child of his born out of wedlock signifying that Article 579 has caused the Claimant to suffer direct and/or indirect loss in that the Claimant cannot inherit his father's estate on the grounds of his status of being the child of a man who has been married and divorced;
 - (4) A Declaration that Article 579 of the Civil Code violates Section 10 of the Constitution of Saint Lucia 'Protection of Freedom of Expression' as it seeks to constrain the Claimant from succeeding to his father's estate on the grounds of his father's status as a married man who has been divorced and who fathered the Claimant out of wedlock;
 - (5) A Declaration that in interpreting the provisions of Sections 2 to 16 of the Constitution of Saint Lucia the Claimant is entitled to equality before the law and protection of the law;

- (6) An Order striking down Article 579 of the Civil Code in its entirety as being inconsistent with the Claimant's constitutional rights and guarantees under Sections 6, 10 and 13 of the Constitution of Saint Lucia; and,
- (7) An order that he is entitled to inherit from his deceased father's estate and obtain a direct benefit therefrom.

[11] From the outset, the court thinks it important to state that the claimant is incapable of bringing a claim that interrogates the breach of any constitutional rights guaranteed to another person pursuant to section 16 of the Constitution, in this case his deceased father. Therefore, the court will confine itself only to those rights which the claimant alleges have been infringed relative to him. Additionally, section 16 of the Constitution does not give the claimant locus standi to pursue a claim for constitutional redress on behalf of his deceased father. The court is fortified in its view by the following provisions of section 16(1) and (2) of the Constitution which provide:

“(1) If any person alleges that any of the provisions of sections 2 to 15 inclusive has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1);...

[12] The court finds further support for this proposition in the case of **Mackenzie Frank and Another v Attorney General of Antigua and Barbuda**² where it was held that section 9 of the Antigua and Barbuda Constitution protected against the compulsory taking of property of any description and an interest or right to or over property of any description, except where certain conditions are satisfied. That the section could only be properly invoked where property rights already exist and such rights have been compulsorily taken possession of or acquired. The court there held that, even

² ANUHCVP2018/0006 (26th June 2020)

if a generous and purposive interpretation were given to section 9, the rights accorded to Barbudans solely by virtue of that status do not constitute an interest in or right over property since they have no immediate entitlement to use, possess or deal with their interest in such property without permission. Therefore, the court reasoned that within the Constitutional context, a right to exclusive use of land can constitute an interest in or a right to or over property, such an interest or right does not exist until permission is granted. The court found that the respondents in that case had made no claim to entitlement of any immediate right to use or occupy any portion of the leased lands and so their statement of claim disclosed no personal entitlement to an interest or right which was compulsorily acquired without compensation. Accordingly, the court found that they have no locus standi to pursue a claim for relief under section 9 of the Constitution.

[13] By the same token the court in this instance finds that the claimant has no locus standi to bring a claim which alleges a contravention of his rights guaranteed by section 6 of the Constitution.

[14] In the court's view, the present claim, at first glance purports to interrogate the inequality that exist between legitimate and illegitimate children as far as the law of succession is concerned in Saint Lucia. The question is whether the existing succession laws by maintaining the distinction between legitimate and illegitimate children affords equal treatment between these distinct classes of persons. However, it appears that the claimant's primary focus was in relation to the constitutionality of the provisions of article 579 of the Code. Therefore, the claimant's constitutional challenge was not premised in the manner which the court has described.

[15] The court wishes to proclaim from the outset that it is not the provisions of article 579 that denies an illegitimate person the right to inherit from their father's estate. To the contrary it is the status of the existing laws of legitimacy and succession that deprives illegitimate persons of that right. On the other hand, article 579 operates to cure the previously existing mischief which prevented illegitimate persons, that is

persons born outside of marriage, from inheriting from their unmarried parents. To that extent, article 579 conferred a right not previously enjoyed by illegitimate persons or persons born to persons who were unmarried.

- [16] There has been an international and even regional effort to remove the distinction that exist between legitimate and illegitimate children so that each category of child is afforded equal treatment and equal protection under the law. There has been legislation and international conventions³ that have sought to remove the distinction between legitimate and illegitimate children in keeping with the enforcement of the rights of the child.
- [17] Saint Lucia is a signatory to the United Nations Convention (the 'Convention') on the Rights of the Child and ratified the Convention on 20th November 1989, which entered into force on 2nd September 1990. In accordance with the Convention, Saint Lucia is obligated to undertake to put in place all appropriate legislative, administrative and other measures for the implementation of the rights recognized therein, which are intended to lead to the elimination of laws or systems that promote inequality or discrimination towards children. Accordingly, Saint Lucia was obligated to amend its laws relating to succession to remove the provision for "irregular succession" or "other succession" in its entirety, as it promotes inequality among children. However, Saint Lucia has failed to adhere to its obligations under the Convention.
- [18] The claimant has not advanced his claim for redress under the Constitution on the basis of the state's failure to adhere to its international obligations. This is surprising as the claimant would have relied on a decision from the European Court of Human Rights ('ECHR') where such a challenge was mounted in respect of certain convention rights which the claimant therein alleged had been breached by operation of the succession laws in her state which disentitled her from inheriting on the grounds of illegitimacy.⁴

³ United Nations Convention on the Rights of the Child

⁴ Vermeire v Belgium [1991] ECHR 56

[19] The provisions of the Code as it relates to legitimacy has as its focal point the sanctity of marriage. This is evident in the provisions of articles 186, 189, 195, 205 and 207 of the Code. Whatever the socio-cultural and religious reasons for the preservation of the concept of the sanctity of marriage, it appears that the distinction between legitimate and illegitimate children has been preserved.

[20] Article 579(1) of the Code which deals with “Other Successions” provides that if the deceased being a single man or a single woman dies leaving children his or her succession falls to them in equal shares. Article 579(6) of the code provides:

“In this article—

(a) “single woman” includes a widow, a married woman living apart and separated from her husband and also a divorced woman; and

(b) “single man” means a man who has never been married.”

[21] This provision came into being as an amendment⁵ to the original article 579 of the Code which ostensibly was intended to ameliorate the circumstances of illegitimate children by permitting them to inherit their parents’ estate in the case of unmarried person where hitherto the estate of unmarried persons would have otherwise been escheated to the Crown.

The constitutional challenge

[22] The thrust of the claimant’s case in a nutshell, was that article 579 of the Code ought to be struck down as being repugnant to the provisions of sections 6, 10 and 13 of the Constitution as it is inconsistent therewith in so far as it prevents an illegitimate child, that is a child born out of marriage, to a man who was married or divorced, from inheriting from his estate.

[23] The court observed that the claimant made the bold assertion that he was entitled to inherit from his father’s estate and in fact included this as part of the relief that he seeks under section 16 of the Constitution. The claimant, in the court’s view, has not provided any substantive legal basis for this assertion. As it stands, there

⁵ Act No. 4 of 1988

presently is no law or statute in force which permits him to inherit from his father's estate. Also, the claimant has not shown the manner in which he has been deprived of that right which he enjoys under any law in force the deprivation of which he is entitled to protection under the Constitution.

- [24] If this was indeed the case, it seems rather curious to say the least that the claimant would have chosen to bring this claim in its present form. Simply put, what is the right to which the claimant says that he is entitled to under any law in force in Saint Lucia? Clearly, the operation of article 579 cannot be said to deprive him of a right which he did not previously possess. The succession laws in force in Saint Lucia do not confer any right on the illegitimate children of men to inherit. The question therefore becomes one of whether the claimant can seek redress under the Constitution to enforce a right or privilege which he does not enjoy under any law in force.

Protection from discrimination

- [25] Section 13 of the Constitution provides:

“(1) Subject to the provisions of subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person or authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(a) for the appropriation of public revenues or other public funds;

(b) with respect to persons who are not citizens;

(c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons), of

the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;

(d) whereby persons of any such description as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to sex, race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office or employment.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12, being such a restriction as is authorised by section 7(2), 9(5), 10(2), 11(2), 12(3)(a), 12(3)(b) or 12(3)(h), as the case may be.

(8) Nothing contained in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

[26] The provisions of section 13(1) of the Constitution are to be read subject to the provisions of sections 13(4), 13(5) and 13(7). Subsection (3) clearly delimits by its very definition of “discrimination” the types of discrimination that is proscribed by section 13. The claimant has not shown that he has suffered discrimination as a result of any of the matters contemplated by section 13(3).

[27] Even more pertinent is the fact that the alleged breach of section 13 relates to the defendant’s father and not specifically or at all to any breach of that provision of the Constitution relative to himself. The court has already discussed this aspect of the case.

[28] More importantly, section 13(4) (c) of the Constitution in the court's view presents an insurmountable challenge to the claimant's case. This is so, simply because the claimant has sought to challenge a law in force that prescribes and regulates the devolution of succession which in the court's view cannot be challenged on the basis that it is repugnant to section 13.⁶

[29] For the foregoing reasons the court finds the declarations sought by the claimant in relation to section 13 to be unmeritorious.

Deprivation of property

[30] Section 6(8) of the Constitution defines "property" as "any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future, absolute or conditional.

[31] By this definition alone, the claimant cannot lay claim to any enforceable right in his father's property. The court's view is fortified by the provisions of section 6 itself. The present claim does not seek to interrogate any issues relative to the compulsory acquisition of the claimant's property or his right to any property. The court has previously observed that under the succession laws in force in the State, the claimant has no right to any property forming part of his father's estate of which he has been deprived.

[32] The claimant's reliance on a breach of section 6 to obtain redress under section 16 of the Constitution is unfortunate and therefore cannot succeed.

Equality and protection under the law

[33] Although not discretely but rather tangentially articulated, the claimant appeared to have relied on the argument that the distinction in the definition of "single man" and "single woman" in article 579 of the Code has the effect of creating unequal and disproportionate treatment between legitimate and illegitimate persons for the

⁶ Magaya v Magaya [1999] LRC 35

purposes of the law of succession and to that extent has deprived him of his right to equality under the law and the protection of the law.

[34] Mr. Collin Foster ('Mr. Foster') Counsel appearing for the claimant, made what the court considered to be a valid point in his written submissions relative to the question of equality under the law as it relates to legitimate and illegitimate children.

[35] Mr. Foster submitted that the effect of article 579 is that it ensures that only the legitimate children of men should inherit and in this manner creates inequality of treatment with respect to illegitimate children born to a married man or a man who had been previously married. The court understood Mr. Foster's submission on this point to mean that article 579 creates inequality between the biological children of a married man and a man whose marriage has been dissolved by depriving them of the right to inherit his estate to the exclusion of his biological children born out of marriage.

[36] To follow Mr. Foster's argument to its logical conclusion, this meant that affording different treatment between legitimate and illegitimate children in this respect deprives the former of their right to equality before the law and the protection of the law. In other words, both classes of persons ought to be treated equally as far as the law of succession is concerned. However, as the court has observed previously, the claimant has not formulated his claim in this way.

[37] In the court's considered view, it does not appear that the mischief lies in the provisions of section 579 of the Code. As far as the court is concerned the real mischief resides in the legitimacy laws of Saint Lucia which the claimant has not challenged.

[38] It seems to the court that separate and apart from any constitutional challenge that can be mounted in respect of the law that permits only the legitimate children to inherit from their father's estate, a resolution of unenviable situation of illegitimate children as far as the law of succession is concerned is a matter for legislative intervention.

- [39] However, in the court's view, this difference in the definition of "single man" and "single woman" relates back to the progenitor of the mischief which the court has already identified and does not advance the claimant's case for redress under the Constitution in any respect.
- [40] The legitimacy laws in force in Saint Lucia are clear. Only legitimate children are entitled to inherit their father's estate. The claimant has not challenged any of the provisions of the Code that pertain to legitimacy on the ground that it affords different treatment to legitimate and illegitimate persons.
- [41] The court thinks that the abovementioned observations are sufficient to dispose of the present matter.
- [42] By way of commentary, the court had occasion to read the decision of Cenac-Phulgence J. in the case of **Cheryl Bertrand and Another v The Attorney General of Saint Lucia**⁷ where similar arguments concerning the constitutionality of section 579 were raised and adjudicated upon. It does not appear to the court that the claimants in that case just as in the present case raised any discrete constitutional challenge to the legitimacy laws in force in Saint Lucia particularly as it pertained to the failure of the state to enact laws to create a position of equal footing between legitimate and illegitimate persons in the state's succession laws.
- [43] Having read the judgment of Her Ladyship Cenac-Phulgence in the above-cited case, the court agrees whole heartedly with the conclusions arrived at by the learned just and would apply the same reasoning relative to the similar points raised in present case.
- [44] Therefore, the court having had the benefit of the written and oral submissions of the parties and having reviewed the case law and authorities presented to the court, it is obvious that the claimant's motion for redress under the Constitution must fail.

⁷ Claim No.s SLUHCv2020/0349 and SLUHCv2020/0351 (30th June, 2021)

Therefore, the claimant's case is dismissed. The court makes no order as to costs against the claimant.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar

