

IN THE COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

SUIT NO. 575A OF 1999

BETWEEN:

EDORA FONTAINE
JOSIAN JOSEPH

Claimants

AND

GIBSON COCKRANE
HESKEITH CUFFY

Defendants

Appearances:

Mr. Don Christopher for Claimants

Miss Francine Baron for the Defendants

11 JULY 2002
DECISION: 19 JULY 2002

JUDGMENT

[1] **CENAC J.**, this is an application by Elister Cockrane for an order that she be substituted as a party in this action in place of the second Defendant Heskeith Cuffy who has since died.

[2] The application is made pursuant to **r 19.2 (5) CPR 2000** and supported by an affidavit of the said applicant.

[3] There is also an application by both Claimants in opposition to Elister's application. They are seeking instead the removal of Heskeith Cuffy 's name as a defendant in the

Suit and to substitute therefor the name of his Personal Representative as a defendant, pursuant to **section 13** of the **Law Reform Miscellaneous Provision Act (No. 4 of 1991)** and in accordance with rule 19.3(6) of **CPR 2000** which deals with the procedure for adding and substituting parties.

Background Facts

- [4] Briefly the background facts are as follows: Vincent Cockrane and his wife Odette Cockrane had two children Elister and Adelia. The First Defendant Gibson Cockrane is the illegitimate child of Vincent Cockrane.
- [5] Both Vincent and his wife Odette died intestate in 1995 leaving an estate of a value in excess of \$1000.00.00.
- [6] Both Elister and Adelia were minors at the time of their parents death. By virtue of rule 21 of the **Non-Contentious Probate Rules 1954**, both minors are entitled to a Grant of Administration before any other person.
- [7] Eldora Fontaine, the First Claimant, is the mother of Vincent's wife Odette and the grandmother of Elister and Adelia and was appointed Guardian ad litem.
- [8] A grant of letters of Administration was made by the Court to the Defendants. This has since been challenged by the Claimants in Suit No 575 of 1999 in which they seek a stay or revocation of the Grant to them. The trial is on going.
- [9] In the meantime Elister Cockrane has come of age hence the application for an order for her to be substituted as a party in place of the second defendant Heskeith Cuffy, deceased.

[10] Mr. Christopher's argument is that Elister Cockrane could be joined as a Claimant but cannot be substituted as a Defendant in light of section 13(1) of the **Law Reform Miscellaneous Provision Act 1991 (No. 4 of 1991)** which states under the rubric "Survival of Causes of Action", the following:

"Subject to this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate".

[11] Having regard to the above and the fact that Elister Cockrane is not the personal representative of the deceased Heskeith Cuffy, she therefore cannot be substituted as a Defendant in his place in this action.

[12] Accordingly I will dismiss the application to substitute her name as a party in place of Heskeith Cuffy. The action may of course continue against the personal representative of Heskeith Cuffy.

[13] I will grant the application by the Claimants and order that the second defendant's name be removed as a defendant.

[14] The applicant will pay the Claimants' costs of \$300.00.

Dunbar Cenac
HIGH COURT JUDGE