

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2001/0929

BETWEEN:

WENDY MC QUILKIN suing herein as Administratrix
of the estate of the late **BRUMMELL Mc QUILKIN**

Claimant

and

ANNE MARIE TURNER (nee Mc QUILKIN)

Defendant

Appearances :

Mrs. W. Harris for the Claimant

Mr. H. Fraser for the Defendant

2007: July 12.

JUDGMENT

[1] **COTTLE, J.:** On the 7th June 2001, the Defendant was granted letters of Administration of the Estate of Josephine Mc Quilkin. The Claimant was married to Brummell Mc Quilkin a beneficiary of the estate of Josephine Mc Quilkin. Brummell died and the Claimant brought the present action on the 2nd November 2001 to compel the Defendant to fully administer the estate of Josephine Mc Quilkin. The issue of the administration of the estate has now been settled. There still remains the application of the Defendant to be remunerated by the estate of the deceased Josephine Mc Quilkin for the services she has rendered as administratrix. The Defendant bases her application on Article 2179 of the Civil Code of St. Lucia.

[2] Article 2179 reads:

“Where the Court appoints a person or corporation other than the Administrator General, to be a trustee, either solely or jointly with another person, the Court may authorize such person or corporation to charge remuneration for his or her services as the Court may think fit.”

[3] It is accepted by Counsel for the Claimant that the Defendant is a trustee for the purposes of Article 2179. The question which remains is whether it is just in the circumstances of this claim to compensate the Defendant for the work that she has done as Administratrix.

[4] The Claimant, through her Counsel urges the Court not to exercise its discretion in favour of the Defendant. It was the Defendant's failure to promptly distribute the estate which caused the Claimant to bring the action, Mr. Fraser says, and she ought not to benefit from her misdeeds.

[5] It is important to go back to the claim filed to see what relief the Claimant sought. The main asset of the estate consists of a parcel of land at Morne Fortune with a building thereon. The Claimant wished to have that property divided or sold after being viewed and valued if it were not amenable to division. The Claimant also demanded an account.

[6] The Defendant has not resisted any of the relief sought. The Defendant has provided the account. The Defendant sought to have the costs of the present claim paid out of the estate. The Claimants seemed at first to accept that the costs ought to be paid out of the estate until the bill of costs was filed in the sum of \$13,550.00. Thereafter there were differences. It was only at that stage, apparently following an enquiry by the Court that the issue of compensating the Defendant arose. Mrs. Harris for the Defendant argues that personal representatives in Jamaica are remunerated at the rate of 5% of the value of the

estate for their work in administering the estate. This estate is now valued at \$650,000, 5% of which amounts to \$32,500. From this amount the sum of \$13,5500.00 as detailed in the bill of costs is to be deducted leaving a payment to the Defendant of \$18,950.

- [7] This is a novel application. I have not been able to find any other instance of a personal representative asking the Court to authorize payment for his or her services. Even in this case the application is very much an after thought.
- [8] I am convinced that the Defendant has expended much care and effort in administering this estate. There has been no suggestion that she has in anyway dealt dishonestly with the estate. Yet I also find that she had no expectation that she would be remunerated for her efforts. The estate would benefit from her proper administration and her benefit would be as beneficiary when the estate is administered.
- [9] However I find that justice requires that she not be put out of pocket for carrying out her duties. I thus authorize the Defendant to charge the estate for her services the amount of \$13,350.00. This will enable her to meet the bill of costs from the estate and not from her share only of the proceeds of the estate.
- [10] The result is that the Defendant will receive no additional amount for her role as administratrix. This I consider is what she, and the other beneficiaries considered would be the position when she first was appointed.

BRIAN S. COTTLE
HIGH COURT JUDGE