

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. 2007/0385

BETWEEN

VERONICA ST. LUCE
TERESA WILTONNIA ESTEPHANE

Claimants

AND

ALLAN THOMAS
UNITA HYACINTH

Defendants

Appearances:

Mrs. Andra Gokool – Foster for the Claimants

Mr. Stanley Felix for the First Defendant

Mr. Vern Gill for the Second Defendant

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2008: June 26
July 9
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JUDGMENT

MASON J:

[1] Probate of the Last Will and Testament of the late Frederick St. Edouard also known as Frederick St. Edward (hereinafter referred to as “the deceased”) was granted to the Claimants on 2nd November 1993.

[2] Some two (2) years later the Defendants applied for and were granted Letters of Administration to the estate of the said deceased on 12th January, 1996.

- [3] By letter from their attorney at law on 18th October 2006 the Claimants brought the grant of probate to the attention of the Defendants and requested that they desist from performing the functions of administrators to the deceased's estate.
- [4] By Fixed Date Claim filed on 16th May, 2007 the Claimants sought against the two (2) Defendants various orders. Most significant among the orders sought are for the Letters of Administration granted to the Defendants to be deemed to have been unlawfully obtained and consequently the Letters of Administration to be revoked and struck off the records of the relevant Registries.
- [5] Subsequent to the filing of the claim, the first Defendant filed an affidavit in support of the Claimants' Claim. The matter then proceeded against the second Defendant.
- [6] In her affidavit in reply to the claim as well as her Witness Statement, the second Defendant admits and acknowledges that the first Claimant is the daughter of the deceased who is also the second Defendant's uncle. The second Defendant declares that at the time of the application for Letters of Administration, she had no knowledge of the existence of a will or of probate having been granted. She continues however that the will now having been produced she is not satisfied as to its validity because it states that it was executed before a Notary Royal but it has not been signed by him. There is also no date to indicate when the witnesses signed or that it happened in the presence of the Notary Royal. She states that when the will had been heard of in the family, it was felt to be "no good".

[7] Counsel for the Claimants, with whom Counsel for the first Defendant concurs, submits that the present proceedings do not relate to the validity of the will and so the second Defendant having failed to provide a defence to the claim, cannot now raise the validity of the will as a fresh issue or as a defence to the present action. It is Counsel's view that the correct procedure would have been to file a claim by originating process for the revocation of the grant which to date has not been done. Counsel asserts that an application to invalidate a will must be specifically pleaded as part of a claim or as a counterclaim in accordance with Part 68.7 CPR.

[8] Counsel for the Defendant's argument concentrated on the validity of the will. Counsel contends that the will having been made a part of the action, the second Defendant has a right to deal with it as it exists and her affidavit in reply to the claim clearly takes issue with the validity of the will. Counsel argues that the will does not conform to the requirements of the Civil Code of Saint Lucia as it relates to either a Notarial or an English will. Consequently the will is an invalid document and must be deemed null and void and the Letters of Administration as granted should stand.

[9] It is my view that it is the grant of probate which must stand and the Letters of Administration revoked with all of the consequences thereto.

[10] By Part 796 of the Civil Code it is provided that probate is granted when the court is satisfied that:

(1) *the will is valid, and*

(2) *all requirements, including the requirements of the Succession Duty Ordinance*

have been complied with.

[11] By Part 794 "court" includes Judge or Registrar of the Supreme Court.

[12] It has to be accepted that when the attorney at law (who incidentally was the one who had drawn up the will) presented to the Registrar the application for the grant of probate, there was nothing on the face of the will which gave rise to any doubt in the mind of the Registrar and so probate was granted.

[13] That having been done – probate having been granted – it did not prevent a subsequent challenge to the will from being made for Article 796 also provides:

"The probate of wills does not prevent their contestation by persons interested"

[14] The Court at this stage cannot be asked to pronounce on the validity of the will.

[15] It is my opinion that if the second Defendant wished through these proceedings to contest the validity of the will, it was incumbent upon her not merely to defend the claim but to set up a positive case whereby the court would be able to make a positive finding as to the validity of the will or who is entitled to the grant. In other words there ought to have been compliance with the provisions of Part 68.7 CPR which states:

“A Defendant to probate proceedings who alleges that he or she has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the proceedings must add to the defence a counterclaim for that relief or remedy”.

[16] Failing this the second Defendant must seek through separate proceedings to have the grant of probate revoked.

[17] In the circumstances judgment is entered for the Claimants and I make the following orders:

1. *That Letters of Administration LA 2003/1995 registered in the Registry of Deeds and Mortgages on 23rd January 1996 in Volume 149A No. 173358 with respect to the Estate of Frederick St. Edouard also known as Frederick St. Edward, having been unlawfully obtained are hereby revoked and struck off the Registries of Probate and Deeds and Mortgages.*
2. *That the Claimants are hereby appointed as joint Administrators with will annexed to complete the administration of the estate of Frederick St. Edouard also known as Frederick St. Edward.*
3. *That the second Defendant provide to this court a complete account of their intromissions from the 12th January, 1996 – date of the grant of Letters of Administration – to today’s date*

4. *That the Claimants are hereby granted an extension of time to 31st July 2009 to complete the administration of the estate*
5. *That in accordance with the Case Management Order of 25th September 2007, the second Defendant pay to the Claimants prescribed costs as per Part 65.5 CPR.*

SANDRA MASON QC

High Court Judge