

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2009**

CLAIM NO. AXAHCV 2008/0100

BETWEEN:

LINETH WEBSTER

Claimant

And

**JOHN BENJAMIN
(Lawful Attorney for Bernice Stapleton, Executrix of the
Estate of Percy Sylvester (deceased))**

Defendant

APPEARANCES:

**Mrs. Tara Ruan of Caribbean Juris Chambers for the Defendant/Applicant
Ms. Eustella Fontaine of Caribbean Associated Attorneys for the
Claimant/Respondent**

2009: March 5th, 12th

JUDGMENT

MICHEL J (Ag.): On December 18th 2008 the Claimant in this suit, Lineth Webster, filed a Claim Form and Statement of Claim in which John Benjamin was named as the Defendant as Lawful Attorney for Bernice Stapleton, Executrix of the Estate of Percy Sylvester.

On February 3rd 2009 Mr. Benjamin filed a Defence and Counterclaim to the suit in which he asked, inter alia, for the Claimant's claim to be dismissed on the basis of res judicata. Mr. Benjamin also filed on that same day a Notice of

Application to strike out the Claimant's Statement of Claim or portions thereof and/or to substitute Mr. Benjamin with the beneficiary named under the Will of Percy Sylvester as the Defendant to this suit. The aforesaid application included also a request to remove the caution lodged by the Claimant on a property registered in the name of Percy Sylvester and for costs. The Notice of Application was supported by an Affidavit of Carolyn Gumbs, who is the named beneficiary under the Will of Percy Sylvester. An affidavit of Patricia Hodge was also filed in support of the application on February 25th 2009.

On March 3rd 2009 the Claimant filed an affidavit in opposition to the Defendant's application.

The application was heard by the Court on March 5th 2009 and judgment was reserved for today, March 12th.

After hearing comprehensive submissions from Counsel for both parties, this Court makes the following findings and orders:

1. That there is no basis to strike out the Statement of Claim or any portions thereof. According to George-Creque J. in her judgment (at page 2 paragraph [3] thereof) the issues arising in the case before her were whether a document which Percy Sylvester tore up was a duplicate or copy of his Will and, if it was a duplicate, whether he intended by tearing up the duplicate to revoke the Will. And her ruling (at page 8 paragraph [10] of her judgment) was that the Defendant had not established that Percy Sylvester revoked the Will by tearing or otherwise and consequently the Will was the valid and subsisting Will of Percy Sylvester and that Ms. Stapleton was entitled to a grant of probate on her application for such grant. The issues addressed and determined in the case before George-Creque J. do not in any way, therefore, constitute the matters raised in the present case as res judicata and nothing contained in paragraphs 20, 21

and 25 of the Statement of Claim or in paragraphs 1 and 2 of the Claimant's claims in the Statement of Claim are an abuse of process as having already been determined by the Court in Suit No. 0060 of 2007.

2. The fact that upon enquiry at the Probate Registry Mr. John Benjamin was said to have been still registered as the holder of the Power of Attorney for Bernice Stapleton at the time of the filing of this suit, and that when letters of administration were granted a few days later they were in fact granted in his name, would suggest that the Claimant had correctly named him as a Defendant in the suit as the Lawful Attorney of the Executrix. The Court therefore accepts the recommendation and undertaking of Counsel for the Claimant that once the grant of letters of administration to Mr. Benjamin has been recalled and a Power of Attorney to Carolyn Gumbs is filed with the Probate Registry, then Ms. Gumbs can be substituted for Mr. Benjamin as the Lawful Attorney for the Executrix on a paper application by the Defendant, which the Claimant will support.
3. There is no basis to order the removal of the caution placed by the Claimant on the property at Caults Bottom, because the Claimant – having made claim to a beneficial entitlement in the property – is entitled to seek to protect her interest pending the determination of the matter by the Court.
4. As is normally the case and as was agreed by Counsel on both sides, costs would follow the event, so the Claimant is entitled to her costs for this application to be agreed or otherwise assessed.

MARIO MICHEL
High Court Judge (Ag.)