

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2009/0199

IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION IN THE ESTATE
OF TERRANCE JOSEPH (DECEASED)

AND

IN THE MATTER OF THE STATUS OF CHILDREN ACT NUMBER 39 OF 1991

AND

IN THE MATTER OF PART 56 OF THE CIVIL PROCEDURE RULES 2000

AND

IN THE MATTER OF AN APPLICATION BY CECILIA JOSEPH AS NEXT FRIEND OF THE
MINOR CHILDREN TERRY RICK EDWARDS AND JANELLE EDWARDS THAT THEY ARE THE
CHILDREN OF TERRANCE JOSEPH DECEASED LATE OF LA DIGUE IN THE PARISH OF
SAINT ANDREW IN THE STATE OF GRENADA

Appearances:

Mr. Ruggles Ferguson, for the Claimant

Ms. Karen Samuel, for the Defendant

2009: July 2
August 28

JUDGMENT

- [1] **MICHEL, J. (Ag.):** By Fixed Date Claim Form filed on 11th May 2009 the Applicant, Cecilia Joseph, applied to the Court for an order that Terry Rick Edwards and Janelle Edwards be declared to be children of the late Terrence Joseph who died on 4th September 2008. Affidavits in support of the fixed date claim were filed by the Applicant, who is the sister of the deceased, by Clair Joseph, who is the mother of the deceased, and by Terry Rick Edwards and Janelle Edwards themselves. The mother of the children - who had been the deceased's common law wife - was not available to depose to the paternity of her children, she having previously died.

- [2] The Fixed Date Claim Form and the supporting affidavits were served on the Attorney General's Chambers and, when the matter came up for hearing before the Judge in Chambers on 14th May 2009, the application was opposed by Counsel representing the Crown.
- [3] One of the initial objections by Crown Counsel, Ms. Samuel, was that there were no death certificates filed evidencing the death of the parents of Terry Rick Edwards and Janelle Edwards. This was corrected by the Applicant by the filing of the two death certificates on 20th May 2009.
- [4] The matter came back before the Judge in Chambers on 21st May 2009 and was adjourned to 2nd July 2009 for hearing.
- [5] On the hearing of the matter on 2nd July, oral submissions were made by Mr. Ruggles Ferguson on behalf of the Applicant and Ms. Karen Samuel on behalf of the Crown.
- [6] Ms. Samuel submitted that the application was defective in that none of the papers filed in the Court indicates any parties to the action. She contended that every claim must have a Claimant and a Defendant and cited Paragraph 568 of Halsbury's Laws Third Edition Volume 30 and the case of **Friern Barnet Urban District Council v Adams et al**¹ in support of her contention.
- [7] Learned Crown Counsel further submitted that, even if the Court is minded to entertain this application notwithstanding the alleged defect, there is still an issue arising from the fact that the affidavit of Clair Joseph – the mother of the deceased – did not indicate that she understood fully the effect that the making of the order sought would have on her rights as the statutory next of kin of the deceased.
- [8] Mr. Ferguson, in his response to Ms. Samuel, submitted that there is no need for two parties in this matter – this being an application for a declaration of the paternity of two

¹ [1926] 2 Ch. 25

children of the deceased supported by the mother and sister of the deceased. He submitted that the Attorney General's Chambers were served with the documents so that they could raise any issue, as they have, arising on the application. But, Learned Counsel contends, the only issue of concern here is whether the Court is satisfied – on the basis of the evidence presented – that the deceased was the father of the two children. Once the Court was satisfied of that beyond reasonable doubt then the application should be granted.

[9] I have read the case of **Friern Barnet Urban District Council v Adams**¹ and the content of Paragraph 568 of Halsbury's Third Edition Volume 30 and can find nothing in either of them to persuade me that a person can not make an application under section 7 or 8 of the **Status of Children Act, 1991** (the Act) pursuant to Part 11 of the **Civil Procedure Rules 2000 (the CPR)** which is not against another person so as to require a defendant or respondent to be named in the proceedings. In fact, when section 7 of the Act states that: "Any person having an interest in a child may apply to the court for a declaratory order that a male or female person is recognised in law to be the father or mother, as the case may be, of that child," it does not appear that there needs to be any parties to the proceedings other than the applicant who is moving the Court. It is perfectly legitimate therefore for someone to make the application made by the applicant in this case, support it with the information and documents which have been filed, serve it on the Attorney General as the representative of the Government of Grenada and, if the Court is satisfied on the evidence presented, then have the application granted.

[10] The issue of the deceased's mother not having indicated in her affidavit that she understood fully the effect the making of the order sought would have on her rights as the statutory next of kin of the deceased is no obstacle to the grant of the application sought, because there is no requirement to this effect in the Act such as there is in the Adoption Act.

[11] In the circumstances, the application is granted and Terry Rick Edwards and Janelle Edwards, both of La Digue in the Parish of St. Andrew in the State of Grenada, are hereby declared to be the children of the late Terrence Joseph, formerly of La Digue aforesaid.

[12] There is no order as to costs.

Mario Michel
High Court Judge (Ag.)