

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

GRENADA

CLAIM NO. GDAHCV2008/0044

BETWEEN:

ANN RICHARDSON: ADMINISTRATRIX OF
THE ESTATE OF ARNALDO RICHARDSON,
DECEASED

CLAIMANT

and

PC 202 JASON NOEL
COMMISSIONER OF POLICE
ATTORNEY GENERAL OF GRENADA

DEFENDANTS

Appearances:

Mr. Ruggles Ferguson and Ms. Sabina Gibbs for the Claimant
Mr. Adebayo Olowu for the Defendants

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2009: May 21 & 22
November 6
.....

JUDGMENT

[1] **MICHEL, J:** By Claim Form and Statement of Claim filed on 21st January 2008 the Claimant claimed against the Defendants, PC 202 Jason Noel, the Commissioner of Police and the Attorney General of Grenada, the following relief:

- (i) Special Damages: Funeral Expenses in the sum of \$13,731.00;
- (ii) Damages on behalf of the Estate of the Deceased under the Law Reform (Miscellaneous Torts) Act Cap 167 of the Laws of Grenada 1990;
- (iii) Damages on behalf of the Dependants under the Compensation for Injuries Act Cap 59 of the Laws of Grenada 1990;
- (iv) Interest pursuant to section 27 of the West Indies Associated States Supreme Court Act Cap 336 of the Laws of Grenada 1990;
- (v) Exemplary and/or Aggravated Damages;
- (vi) Damages for wrongful death;
- (vii) Costs; and
- (viii) Such further or other relief as this Honourable Court deems fit.

[2] The Claimant filed the claim "In her capacity as Intended Administratrix of the Estate of Arnaldo Richardson, Deceased." Letters of Administration for the Estate of Arnaldo Richardson were granted to the Claimant on 30th April 2008 and on 21st May 2008 Master Cheryl Mathurin gave leave to the Claimant to make an application under Part 21 of the Civil Procedure Rules 2000 to be substituted as a party to the suit as the Administratrix of the Estate of Arnaldo Richardson. An application dated 17th June 2008 was made by the Claimant to this effect before Master Mathurin on 19th June 2008 and, although the actual Order entered on 1st July 2008 does not reflect an order made on this application, there is a note on the Court's file to the effect that the application was granted and the actual Order entered by the Court on 1st July 2008 is headed "Ann Richardson: Administratrix of the Estate of Arnaldo Richardson (Deceased)" instead of "Ann Richardson (In her capacity as Intended Administratrix of the Estate of Arnaldo Richardson, Deceased)."

[3] When the case came up for trial on 21st May 2009 Learned Counsel for the Defendants objected to the claim being tried on the basis that the Claimant had no authority to commence this action in the capacity that she did because the status

of intended administratrix of the estate of a deceased person is not recognised in law. Counsel referred to the following authorities on the issue: the Grenadian High Court case of Agnes Henry v Roselyn Olive et al¹; the English Court of Appeal case of Ingall v Moran²; and the Eighth Edition of Parry and Clark's "The Law of Succession."

- [4] The response of Learned Counsel for the Claimant was to urge that this was an attempt at ambush, because no objection was taken by the Defendants at any stage previously - not at Case Management, not at Pre-Trial Review – but, as the trial is about to commence, with no warning given to the Claimant, the Defendants seek to raise this issue. The Claimant therefore asked that the Defendants not be heard on that issue at that stage in the proceedings.
- [5] Having regard to the previous Order of Master Mathurin on the issue and to the earlier-mentioned note on the Court's file, and having regard to the stage at which objection was being taken by Counsel for the Defendants, with the parties and their witnesses present for the purpose of a trial, the Court allowed the trial of the matter to proceed, leaving the issue raised to be subsequently determined.
- [6] Now that I have had the opportunity to peruse the authorities cited and to consider the submissions made by Counsel on behalf of the parties, I feel constrained to uphold the submission made by Learned Counsel for the Defendants, since the authorities appear to be abundantly clear that no action can be commenced by an intended administrator of the estate of a deceased person, because the capacity of an administrator to act on behalf of the estate of the deceased person arises not

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2. [1944] 1 All E.R. 97

from the death of the deceased, as is the case with an executor, but only from the grant of letters of administration. The authorities are equally clear that there can be no relation back to the death or to the commencement of the action after the issue of letters of administration. An action commenced before the issue of letters of administration is therefore a nullity incapable of being cured or, put in more graphic terms, a still born baby incapable of being revived. Late though the objection of Counsel for the Defendants was to the claim brought by Ann Richardson before she had obtained letters of administration for her deceased son, the objection is nonetheless unanswerable and must be upheld by this Court.

[7] This would suffice to dismiss the Claimant's claim. Having read and listened to the evidence though and having seen and heard the witnesses, I am prepared to go further and to hold that the Claimant's case also fails on the evidence, because the Court is not satisfied on a balance of probabilities that the Defendants are liable in tort for the death of Arnaldo Richardson.

[8] There are, as is to be expected, essentially two conflicting versions of the events which transpired on the night of Friday 27th July 2007 at the bus terminal in St. Georges. In essence, the version of the events which the Claimant is asking the Court to accept amounts to the following: that the deceased, who pulled out a cutlass "from his waist" and ran after another young man with the cutlass, with the evident intent of chopping the man for daring to poke at him while speaking to him, dropped his cutlass and placed his hands up in the air and surrendered with his back turned to a person whom he did not see and did not know was a policeman or that the person was carrying a gun; he surrendered to this stranger only because he heard the stranger say "drop it". This is the evidence which the Court is being asked to accept on behalf of the Claimant, because it was averred on behalf of the Claimant that the deceased was running after another man when the police officer in plain clothes started to run after the deceased. It was averred on behalf of the Claimant that the police officer never said "police" or in any other way identified himself. There is no evidence that the deceased ever looked back to

see who was running after him before he dropped his cutlass, put his hands up in the air and surrendered to his pursuer. There is no evidence to suggest that he knew that his pursuer had a gun. What is it that caused this obviously aggressive and pugnacious young man who would whip out his cutlass and chase after another young man with it for daring to touch him on his face with his finger - even after the young man was clearly running away in fear of him - to drop his weapon, put his hands up in the air and surrender to some stranger whom he does not know and has not even seen, on the mere utterance by the stranger of the words "drop it?"

[9] The Court finds this version of the events of that fateful night difficult to accept and prefers the alternative version of the Defendants that the First Named Defendant ran after the deceased when he saw the deceased chasing after another man and making chops at the man with a cutlass and, after asking the deceased several times to drop his cutlass and the deceased failing to do so, the First Named Defendant fired at the deceased with the intention of disarming him of the cutlass but instead shot him in his back, resulting in his death. There is no motive nor anything else to suggest that a police officer on duty and seeing a man trying to chop another with a cutlass would run after the man and ask him to drop the cutlass and, after the man had complied with his directions and surrendered himself to him, that the officer would simply shoot the man to death in cold blood in the presence of several persons.

[10] I find therefore that the First Named Defendant acted lawfully in trying to restrain and/or detain a person who was committing a criminal offence and, in the process, unfortunately, the offender met his death. No liability therefore attaches to the Defendants in these proceedings.

[11] It was open to and indeed incumbent upon the Defendants to have made application a long time ago and certainly by the time of Case Management of this matter in May/June 2008 to have the matter dismissed for having been brought by

a party lacking the capacity so to do. The Defendants failed to do so and allowed the matter to continue for another year - with attendant costs to both parties – before making an application for the first time at the trial in May 2009 for the dismissal of the case on account of the lack of capacity of the Claimant at the time of the filing of the claim. In those circumstances, the Defendants are not entitled to costs, certainly not for the second half of the proceedings. Conceivably the Defendants may be entitled to their costs for the first half of the proceedings and maybe to pay the Claimant's costs for the second half of the proceedings. In the circumstances, no order will be made as to costs.



Mario Michel
High Court Judge