

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0938

BETWEEN:

**ELIZABETH WILLIAM
Qua Administratrix of the Estate of Joseph Severin**

Claimant

and

**[1] THOMAS ISIDORE
[2] CURTIS DESIR
[3] LEANUS PROSPERE
[4] ALBERT VOSEN
[5] ONE "LAW LOY"
[6] ONE "COMPTON"**

Defendants

Before:

The Hon. Mr. Ephraim Georges

High Court Judge [Ag.]

Appearances:

Mr. Ramon Raveneau for the Claimant

Mr. Patrick M. A. Straughn for the Defendants

2012: September 7.

DECISION

- [1] **GEORGES J [AG]:** By Fixed Date Claim filed 22nd September 2008, the claimant Elizabeth William qua Administratrix of the Estate of Joseph Severin of La Croix Maingot in the Quarter of Castries claims against the defendants all also of La Croix Maingot vacant possession of the property situate at La Croix Maingot in the Quarter of Castries and registered in the Land Registry as Block 0842 Parcel 23 and damages for trespass.

- [2] The actual claim as set out in the claim form is for:
1. An order for possession of the property
 2. Mesme profits
 3. Interest on all sums found due to the claimant
 4. Costs
 5. Further or other relief as the Court sees fit.

Pleadings

- [3] The claimant's case as set out in the statement of claim is that she was at all material times **the grand daughter and coheir of Joseph Severin now deceased who was the registered proprietor of Parcel 23 ("the Property")** (My emphasis)
- [4] The claimant on 14th August 2007 allegedly received Letters of Administration to administer the Estate of Joseph Severin and is at present together with her siblings, a registered proprietor of the Property.
- [5] In paragraph 4 of the statement of claim the claimant avers that the fourth defendant Vosen is and was at all material times a descendant of Agnes Laurent who rented a portion of the Property from Joseph Severin.
- [6] Agnes Laurent is now deceased but the fourth defendant Vosen continues to occupy the Property for many years without paying rent the claimant complains in the mistaken impression that he was entitled to do so.
- [7] The other defendants the claimant avers are in occupation of the Property upon licence of the fourth defendant Albert Vosen – a licence which the claimant contends he had no authority to give.
- [8] The claimant now requires the Property for her own use and that of her siblings and claims against the defendant vacant possession and damages for trespass to the Property.

- [9] Defendants No. 1-5 duly entered acknowledgement of service by their legal practitioner Patrick M. A. Straughn. The 6th defendant Patrick Gilbert alias one "Compton" had his acknowledgement of service filed by legal practitioner Alvin St. Clair. The 5th defendant alias one "Law-Loy" disclosed his full names as Bernard Prospere.
- [10] The fourth defendant Albert Vosen filed a defence on 19th November 2008 through Mr. Straughn his Legal Practitioner in which he admitted in paragraph 1 that the claimant was the registered proprietor of Parcel 23 (albeit fraudulently).
- [11] He went on to contend that the claimant had fraudulently obtained Letters of Administration (in the Estate of Joseph Severin) and inasmuch as he had no knowledge of what was meant in law by the expression "together with siblings" paragraph 2 of the statement of claim was not admitted: He further contended in paragraph 2 of his defence that the claimant in fact had no locus standi to bring this claim in the capacity of Administratrix of the Estate of Joseph Severin since a Designation and Vesting Deed had been executed on 16th April 2008 and had been registered in the Land Registry on 26th May 2008 by which Instrument her authority qua Administratrix had altogether ceased.
- [12] The deponent viz the fourth defendant admitted (in paragraph 4 of his defence) that he is and was at all material times the son and only heir at law of Agnes Laurent (née Vosen) but he denied ever having rented a portion of land from Joseph Severin. He further contended that his late mother Agnes Laurent was the grand daughter of Joseph Severin and aunt of the claimant Elizabeth William and that Joseph Severin could not have leased any property to his mother since he was not alive in his mother's lifetime.
- [13] The fourth defendant Albert Vosen went on to deny altogether the contents of paragraph 4 of the statement of claim to the effect that following the death of his mother Agnes Laurent he continued to occupy the Property (formerly rented to his mother by Joseph Severin) for many years without paying any rent under the mistaken impression that he had a right to do so.

- [14] In that regard he explained that he in fact left St. Lucia to live and work in England in 1960 and returned in 1989 and confined himself to his business as a Restaurateur and had no business whatsoever to do with the land in question.
- [15] The averment in paragraph 5 of the statement of claim that the remaining defendants viz Defendants Nos. 1,2,3,5 and 6 are in occupation of the Property by virtue of his licence he labelled as a total fabrication.
- [16] As regards the contents of paragraph 6 of the statement of claim the fourth defendant denies any knowledge of the matters therein pleaded and maintains that the claimant is not entitled to damages or any relief sought. He accordingly prayed that the claim be dismissed with costs.
- [17] In his defence filed 19th November 2008 the first defendant whilst admitting that the claimant was heir of Joseph Severin deceased the great grandfather of both the claimant and the defendants, denies that the said Joseph Severin was the registered proprietor of Parcel 23 ("the Property").
- [18] He further admitted that the claimant had been granted Letters of Administration in the Estate of the late Joseph Severin but contends that she fraudulently claimed to be the grand daughter of Joseph Severin deceased thus excluding all the defendants as heirs of the said Joseph Severin.
- [19] He professed that he had no knowledge of the particulars pleaded in paragraphs 3 and 4 of the statement of claim and denied that the remaining defendants i.e. Nos. 2 - 6 are/were in occupation of the Property upon the licence of the fourth defendant which he had no authority to give. He in fact contended that prior to the claimant's fraudulent procurement of Letters of Administration in the Estate of the late Joseph Severin the portion of land in question had always been occupied by the heirs of Joseph Severin which include the father of himself, the first defendant, the mother of the fourth defendant and the father of the claimant.

[20] The first defendant opposes the claimant's claim for vacant possession of the Property and damages for trespass in relation thereto.

[21] By Notice of Application filed 21st November 2008, the defendants applied to the Court through their Legal Practitioner Mr. Patrick Straughn for the following orders namely:

1. That the claimant's Statement of Claim be struck off pursuant to Civil Procedure Rule CPR26.3(1)(d);
2. Such further relief as this Honourable Court deems just;
3. That the Claimant/Respondent be made to pay the costs of this Application.

[22] The grounds of the Application are that:

1. The Claimant/Respondent having executed a Designation and Vesting Deed on 16th April 2008 and registered in the Land Registry on 26th May 2008 as Instrument Number 2893 of 2008 in accordance with the provision of the Civil Code cannot institute the claim by describing herself as Administratrix of the Estate of Joseph Severin. In so doing the Claimant/Respondent has not acted in accordance with CPR 8.5(2)(a)
2. That this claim is an abuse of process of the Court since all the parties are heirs of Joseph Severin deceased and consequently the Grant of Letters of Administration was fraudulently obtained.
3. CPR 8.5(2)(a) stipulates that:

"Where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be party to the proceedings, unless the court orders otherwise."

[23] In their supporting affidavit filed 21st November 2008, the Defendants/Applicants identified and exhibited a copy of the Letters of Administration granted to the Claimant/Respondent by the High Court of Justice in the Estate of Joseph Severin on 14th August 2007 (Exhibit "A") and a copy of the Designation and Vesting Deed

by the Claimant/Respondent executed on 16th April 2008 and registered in the Land Registry on 26th May 2008 as Instrument No. 2893 of 2008 (Exhibit "B").

- [24] The Defendants/Applicants in paragraph 3 of their supporting affidavit stated that on the advice of their Solicitor they verily believed that since the Claimant/Respondent had executed a Designation and Vesting Deed on 16th April 2008 she was no longer the Administratrix of the Estate of Joseph Severin and could not therefore bring this claim in that capacity. I fully agree.
- [25] They further asserted that the Claimant/Respondent, her brother, her sister and the Defendants/Applicants themselves were all heirs of Joseph Severin deceased and that the Grant of Letters of Administration was thus fraudulently obtained as a result of which they had instructed their Solicitor to initiate proceedings to impeach both documents. That as I see it is the gravamen of the defendants' case.
- [26] In sum the Defendants/Applicants state that the Claimant/Respondent could not maintain in this claim that she is the Administratrix of the Estate of Joseph Severin and request that the claim should be struck out and that the Claimant/Respondent be made to pay the cost of this application.
- [27] The second, third, fifth and sixth defendants also filed defences to the claimant's statement of claim filed 22nd September 2009 and applied to have the said claim dismissed with costs.
- [28] By Notice of Application filed 22nd December 2008 the Defendants/Applicants applied to the Court for the following Order:-

That the Defendants/Applicants be allowed to proceed by impropriation against the documents designated namely (1) Letters of Administration dated 14th August 2007 and (2) Designation and Vesting Deed registered at the Land Registry as Instrument Number 2893 of 2008 upon which the claimant instituted her Claim No. SLUHCV 2008/0938 against the defendants.

[29] The grounds of the Application are that:

1. The claimant and the Defendants/Applicants are related by blood, and consequently they are all co-owners of the land claimed by the Claimant on her own behalf and also on behalf of her brother and sister as the heirs of Joseph Severin deceased.
2. That the documents, namely the Grant of Letters of Administration obtained by the Claimant on 14th August 2007 was fraudulently obtained and the Designation and Vesting Deed was also fraudulently executed.
3. That if the status quo is allowed to remain, justice would be denied to the defendants
4. The Defendants be permitted by the Court to proceed to improbation of the designated documents being the only defence to the claim of trespass alleged against them by the claimant.

[30] In their supporting affidavit of even date the defendants aver at paragraph 3 that since the Claimant/Respondent has executed a Designation and Vesting Deed on 16th April 2008 she was no longer the Administratrix of the Estate of Joseph Severin deceased and could not bring this claim in that capacity. Further, the Grant of Letters of Administration obtained by the claimant on 14th August 2007 was fraudulently obtained and the Designation and Vesting Deed was also fraudulently executed and should the status quo remain justice would be denied them.

[31] They now therefore sought to be permitted by the court to proceed to improbation against the designated documents namely:

1. Letters of Administration dated 14th August 2007
2. Designation and Vesting Deed registered at the Land Registry as Instrument Number 2893 of 2008

being the only defence to the claim of trespass alleged against them by the claimant.

[32] In her affidavit in response the Claimant/Respondent refuted the allegations made by the Defendants/Applicants in the affidavit in support of their Notice of Application for Improbation as “audacious and entirely unfounded” and providing “absolutely no proof in their evidence to substantiate their heinous claims.”

[33] Strange to relate the Respondent’s own 17 paragraph affidavit in response is itself wholly unsupported and devoid of any documentary exhibits whatsoever. She went on to reiterate that she was the grand daughter of Joseph Severin and that her sister Mathurin Emilien, her brother Joseph Emilien and herself are the only grandchildren that she was aware that he had and that she had grown up knowing this to be a fact.

[34] From her childhood she added she had always known that Joseph Severin had died in the 1930’s/1940’s and that he had only three children, namely Theresa Emilien-Flood who died intestate and had one son who predeceased her and left no offspring and her father Alexander William also known as Wilness Emilien who left three children to wit herself, her sister Mathurin Emilien-Clarke and her brother Joseph Emilien, now resident in Barbados.

[35] In paragraphs 7 to 11 the Claimant/Respondent disclosed:

7. That I embarked upon the process of obtaining Letters of Administration for my grandfather in April 2005 but had tremendous difficulty in locating some of the death certificates.

8. That in April 2006 I filed an application for presumption of death for (1) Joseph Severin, (2) Anne Emilien and (3) Harry Emilien. The said application was publicized in The Voice Newspaper on Tuesday, 4th May 2006 and 9th May 2006 and in the St. Lucia Government Gazette on 8th May 2006 and 15th May 2006 respectively.

9. *That based on the publication and the Affidavit evidence of two independent witnesses, the Order granting the presumption of death was given on 18th May 2006.*

10. *That I was granted Letters of Administration for the estate of my grandfather Joseph Severin aka Emilien Severin Joseph on 14th August 2007.*

11. *That at no time during my upbringing have I ever known the Defendants to be the offspring of Joseph Severin, in fact they are not.*

[36] In paragraphs 12 to 14 the Claimant/Respondent asserted:

12. *That what the defendants are either ignorant of or are simply not admitting is that there are four men who all carried the name Joseph Severin. The first is Atthill Severin Joseph, the second is Vosen Severin Joseph, the third Theonie Severin Joseph and fourth Emilien Severin Joseph, my grandfather.*

13. *That I believe the defendants to be descendants of Vosen Severin Joseph as they are certainly not descendants of my grandfather Emilien Severin Joseph and are not entitled to any part in his succession.*

14. *That the Defendants are not entitled to any share in Block 0842B Parcel 23 and I refute the claim that it is family land, as it was owned by my grandfather, Emilien Severin Joseph aka Joseph Severin solely.*

[37] The Claimant/Respondent concluded by declaring in paragraph 15 that the properties in which the defendants may have a share are Block 0643B Parcels 215 and 185 as mutated as those properties are jointly owned by numerous individuals inclusive of the four gentlemen abovementioned in paragraph 12 (i.e paragraph 36 herein).

- [38] She finally refuted the allegation that she had fraudulently obtained Letters of Administration to her grandfather's estate which she said was a serious allegation calling for strict proof by the defendants.
- [39] She accordingly asked the Court to dismiss the Notice of Application for Improbation with costs.
- [40] In a supplementary affidavit filed 5th March 2009 on behalf of the Defendants/Applicants by their Solicitor Patrick M.A. Straughn the said defendants declared at paragraph 3 that the Grant of Letters of Administration and the Designation and Vesting Deed were fraudulently obtained and executed by the Claimant/Respondent on the following grounds:
- "(i) That the Claimant/Respondent sworn to and declared that Joseph Severin and Emilien Severin Joseph aka Emilien Severin are one and the same person. These statements are untrue since evidence submitted herein by a Deed of Sale executed 22nd June 1868 does not state any other names except JOSEPH SEVERIN exhibited herein and marked "C". We also rely on a Declaration of Succession dated 28th October 1919 which states that the name JOSEPH SEVERIN exhibited herein and marked "D" and also the Claim Form with its Affidavit in Support produced to the Land Adjudicator dated 24th October 1986 exhibited herein and marked "E" collectively.
 - (ii) In respect of the Statement of the Claimant/Respondent that her grandfather JOSEPH SEVERIN was a bachelor, this is wholly untrue since both the Deed of Sale and the Declaration of Succession referred to earlier state in clear language that JOSEPH SEVERIN was a married man and married in community of property with SOPHIE ELIZABETH aka CEPHINISE SEVERIN aka ATTIE."
- [41] The Defendants/Applicants further averred that Joseph Severin could not be the grandfather of the Claimant/Respondent since the Declaration of Succession states all the children of the said Joseph Severin.
- [42] The Defendants/Applicants further declared in paragraph 5 that the Claimant/Respondent and her brother and sister did not succeed to her

grandfather's estate since he was never married and died intestate, and consequently she could not in truth describe herself and her brother and sister as heirs of JOSEPH SEVERIN as shown on the Extract of the Land Register 0842B 23 exhibited herein and marked "F". No fewer than 8 documentary exhibits were attached to the supplementary affidavit including: Baptism & Birth Certificate of Alexander William marked "G". Birth Certificate of Alexander William marked "H". Affidavit of Cornelius Severin marked "I".

[43] In her affidavit in response to the Defendants/Applicants' Supplemental Affidavit in support of Notice of Application for leave to impropate, the said affidavit having been filed on 5th March 2009 and deposed to on even date; the Claimant/Respondent went on to refute in its entirety the allegation that she had obtained any Letters of Administration or Vesting Deed fraudulently as alleged, contending in the main that her siblings and herself had grown up knowing that they were the descendants of Joseph Severin as it was always a part of their family history.

[44] She further averred that the Declaration of Succession dated 28th October 1919 referred to in paragraph 3(i) (see paragraph 40 herein) was entirely irrelevant to this matter as it referred to **Block 0643B 215** as mutated and not **Block 0842B 23** which is the subject matter of this case. Further the name as stated in the said declaration refers to a Severin Joseph and not Joseph Severin. (Emphasis supplied)

[45] In paragraphs 7 to 11 of her affidavit in response the Claimant/Respondent states:

7. That he Claim Form with its Affidavit in support to the Land Adjudicator dated 24th October 1986 refers to only one claim which was made on the property during the Land Registration and Titling Project. This particular claim was numbered 7C229. The Adjudication record however refers to another claim, No. 7C329. This second claim was instituted by my father Alexander William and a copy of it is attached hereto and marked "EW1".

8. *That I am unsure as to what took place at the time or what procedure had to be followed for establishing title. All I am aware of is that the property was put in the name of the heirs of Joseph Severin (not Severin Joseph) and was put in care of my father, who paid the property tax on the property for years before his death.*
9. *That I was initially of the impression that Joseph Severin was a bachelor, if this however is not the case, I stand corrected but this is irrelevant as it has already been established upon the evidence of two independent witnesses in the Application for presumption of death that my siblings and I are his direct descendants.*
10. *That the Defendants assert that in paragraph 3(ii) of their Supplemental Affidavit that Sophie Elizabeth and Cephinise Severin aka Attie are one and the same person. This I refute as there is no evidence to support this. Further, what the two documents show is that Joseph Severin was married to Sophie Elizabeth and that Severin Joseph was married to one Cephinise Severin aka Attie, nothing more. There is no visible link between the two.*
11. *That we cannot automatically assume that Joseph Severin is the same person as Severin Joseph and that Sophie Elizabeth is the same as Cephinise Severin, especially as the Deed of Sale and the Declaration of Succession in which those names are mentioned refer to totally different properties.*

[46] The deponent goes on to state that the children listed in the Declaration of Succession are the children of Cephinise Severin and are not necessarily the offspring of Severin Joseph as the declaration deals with the succession of the said Cephinise Severin and her heirs and not specifically that of Severin Joseph and further the said document mentions a Severin Joseph and not a Joseph Severin.

[47] She goes on to reiterate that she is the descendant of Joseph Severin and that her sister Mathurin Emilien, her brother Joseph Emilien and herself were/are the only direct descendants that she is aware as being his and that she had grown up knowing this to be a fact. And at no time during her upbringing had she ever known the defendants to be offsprings of Joseph Severin and that she did not in actual fact believe they are.

[48] Consequently she held that the defendants are not entitled to any share in Block 0842B Parcel 23 and she accordingly refuted the claim that it is family land as it was owned solely by Joseph Severin. She once again firmly refuted the allegation that she had fraudulently obtained Letters of Administration of the estate of Joseph Severin and such a serious allegation had to be strictly proved by the defendants. She asked that the Notice of Application for leave to proceed to Improbation be dismissed with costs.

Overview

[49] Perusal of the case file shows that this action was initially instituted by fixed date claim form (Rule 8.1(5)) CPR by the claimant for an order for possession of property of which she had obtained Letters of Administration on 14th August 2007 as the grand daughter and co-heir of Joseph Severin deceased who was the registered proprietor of Block 0842B Parcel 23 (hereinafter referred to as "The Property"). She is now together with her siblings, a sister and a brother, a registered proprietor of the Property.

[50] The claimant alleges that the fourth-named defendant, a descendant of Agnes Laurent who rented a portion of the Property from Joseph Severin continues to occupy the Property following the death of Agnes Laurent and has done so for many years without paying any rent under the mistaken perception that he had the right to do so. The remaining five defendants are alleged to be in occupation of the Property upon licence of the fourth-named defendant – a licence which the claimant says he had no authority to give. The claimant now seeks vacant

possession of the Property for the use of herself and her siblings and claims damages, mesne profits interest and costs.

[51] The defendants in due course filed acknowledgments of service and defences which are outlined in paragraphs 10 to 20 in respect of the fourth and first defendants. The second, third, fifth and sixth defendants also filed defences and applied to have the claim dismissed with costs.

[52] By Notice of Application filed 21st November 2008 the defendants applied to the Court through their Solicitor Mr. Patrick Straughn to have the claimant's statement of claim struck off pursuant to Part 26.3(i)(d) CPR and for such other relief as to the Court seemed just.

[53] The grounds of the Application are set out in paragraph 22 and the supporting affidavit is outlined in paragraphs 23 to 26.

[54] At length by Notice of Application filed 22nd December 2008 the defendants/applicants applied to the Court for an order that they be allowed to proceed by improbation against the documents designated:

1. Letters of Administration dated 14th August 2007, and
2. Designation and Vesting Deed registered at the Land Registry as Instrument No. 2893 of 2008 upon which the claimant had instituted Claim No. SLUHCV2008/0938 against the defendants.

[55] With the "pleadings closed" on 28th November 2008 the application by the defendants to strike out the claimant's statement of claim filed 21st November 2008 was fixed for 12th January 2009. That hearing was rescheduled to 9th February 2009. On 5th February 2009 the claimant filed an affidavit in response to the Notice of Application for Improbation and accompanying Affidavit in Support filed 22nd December 2008. A final Supplementary Affidavit filed 5th March 2009 by the defendants eventually made the way clear for the hearing of the application for leave to improbate on 7th April 2009.

[56] Neither Mr. Ramon Raveneau for the Claimant/Respondent nor Mr. Patrick Straughn for the Defendants/Applicants were then in a position to provide the Court with written submissions/skeleton arguments as hoped/intended; so much reliance had to be placed on a transcript of the proceedings which did not materialize before 7th March 2012. The resulting delay in rendering this decision is therefore most regrettable.

[57] Prior to the hearing of the Defendant/Applicants' Notice of Application for leave to impropate the Claimant/Respondent's designated documents, namely

(1) Letters of Administration dated 14th August 2007 and

(2) Designation and Vesting Deed registered at the Land Registry as Instrument No. 2893 of 2008 upon which the Claimant had instituted her Claim SLHCV2008/0938 against the Defendant; Mr. Raveneau indicated that he had only on **6th April 2009** filed an affidavit in response to the Supplementary Affidavit filed by the Defendants on 5th March 2009. He was minded he said to oppose the application to impropate based as it were on the grounds of alleged fraud. He further added that there was insufficient evidence to show/establish that the defendants are the heirs of Joseph Severin.

[58] Referring to paragraph 3 of the Defendants' Supplementary Affidavit (set out at paragraph 40) herein he submitted that a prima facie case had not been made out. The application he added had been premised on fraud which had not been proved. Further, there was insufficient documentary evidence to show that the defendants are the heirs of Joseph Severin.

[59] Mr. Straughn on the other hand drew the attention of the Court to the Vesting Deed of the Claimant filed 20th May 2008 and in particular to the Schedule on page 3 Title 1 to discover who Joseph Severin is. He was never married and remained a bachelor he asserted. Emilien was the claimant's grandfather he insisted and Joseph was not.

- [60] Mr. Raveneau submitted that the Claimant Elizabeth William obtained Letters of Administration in the Estate of Joseph Severin in the year 2006. She had always known that she was a descendant of Joseph Severin and went through the process of obtaining all the birth certificates that she could he said and for the death certificates that she could not obtain she got a Presumption of Death Order.
- [61] The said application was advertised according to law he said and then based on that the Letters of Administration were granted. There was absolutely no fraud in this matter he contended.
- [62] Turning to the supplementary Affidavit of the Defendants filed 5th March 2009 and sworn by Mary Francis, paragraph 3(i) Mr. Raveneau declared made reference to a Deed of Sale executed on 22nd June 1868 and also to a Declaration Succession dated 28th October 1919.
- [63] Those two documents Mr. Raveneau disclosed dealt with two different properties. The Deed of Sale of 1868 he said dealt with Parcel 23 the subject matter of the original claim which was filed. The Declaration of Succession of 1919 however deals with a Parcel 0643B 396 and 397 which was originally Parcel 215. And the contention of the Defendants is that they are the descendants of Severin Joseph who was married to a Cephinise Severin also known as Attie. From subsection (ii) of paragraph 3 the Defendants seemed to be relying on the Declaration of Succession dated 28th October 1919 Mr. Raveneau submitted.
- [64] There were no fewer than three different claims made in 1986 for Parcel 23 Mr. Raveneau pointed out; one by Conrad Flavius, another by Antoine Vosen and a third by Alexander William in respect of 7C 329 and the claim by Antoine Vosen is in respect of 7C 229. Mr. Raveneau then frankly admitted that he was not exactly sure what the process for determining who the real owner at the time was but according to him somewhere along the line, the adjudicators found it best to put the property in the name of the heirs of this Joseph Severin in care of his client Elizabeth William's father namely Alexander William until she herself obtained Letters of Administration. That is when the trouble started he declared. The issue

as he saw it was whether she had fraudulently obtained her documents as the Defendants contend or not and in order to prove this he argued the burden of proof was formidable he argued and the reason why he opposed the application was that there was insufficient documentation to show that the Defendants are the heirs of Joseph Severin.

- [65] Reverting to the Deed of Sale and the Declaration of Succession referred to in subparagraphs 3(i) and (ii) of the Supplementary Affidavit (see paragraph 40) Mr. Raveneau pointed to the fact that the Deed of Sale named a Joseph Severin who was married to a Sophie Elizabeth. The Declaration of Succession on the other hand speaks to a Severin Joseph married to a Cephinise Severin also known as Attie.
- [66] According to him, the Defendants would like the court to accept that the Joseph Severin from the Deed of Sale of 1868 is the same person as Severin Joseph from the Declaration of Succession 1919 and that Sophie Elizabeth from the Deed of Sale of 1868 is the same person as Cephinise Severin also known as Attie from the Declaration of Succession of 1919.
- [67] Mr. Raveneau went on to acknowledge that there was a problem because the evidence relied upon to show that there has been a fraud are those two documents but the two documents he contended were not related to each other. And it cannot simply be assumed as the Defendants have purported to do that Sophie Elizabeth is the same person as Cephinise Severin also known as Attie without more. There must be some sort of connexion or link as Mr. Raveneau put it. And that in truth and in fact is the bedrock of the defendants' allegation of fraud which in my considered opinion cannot in the circumstances sustain the defendants' application for leave to move to improbation in the absence of at least a prima case of fraud by the claimant.
- [68] In response, Mr. Straughn first referred to the Vesting Deed of the Claimant the title for which is the Deed of Sale dated 23rd June 1868. Further reference was

made to Schedule 1 Bock 0842B 23 of the Vesting Deed filed 20th May 2008. The Deed of Sale at page 3 of the first schedule recites at Title I:

“Deed of Sale by Felicite Monpelly to Joseph Severin executed on 23rd June 1868 before Roseville Allies and Colleague Notaries Royal and registered in the Registry of Deeds and Mortgages in Vol. 38 No. 9 063”

That Mr. Straughn declared was the title to the land in question.

- [69] This is a Deed of Sale exhibited to show who Joseph Severin is Mr. Straughn further declared because the Letters of Administration i.e the grant says that Joseph Severin was never married and was a bachelor. The Vesting Deed and the order of the Letters of Administration reads: “Joseph Severin also known as Emilien Severin Joseph, also known as Emilien Severin in his lifetime of La Croix Maingot in the Quarter of Castries, hereinafter referred to as the Deceased, **died intestate and a bachelor.**” (Emphasis supplied)
- [70] That was the order contained in the Letter of Administration Mr. Straughn pointed out. The Deed of Sale exhibited in French as well as in English unequivocally states that Joseph Severin was a married man and so does the Declaration of Succession which gives in detail the names of the children of that marriage, one of them being Emilien. So that if there is a conflict in the Deed of Sale and the grant of Letters of Administration in the sense that the Defendants have adduced evidence to show who Joseph Severin is, but there is no evidence to show from the other side that Joseph Emilien was not a married man.
- [71] Mr. Straughn contended that evidence had shown that Joseph Emilien was not a bachelor as alleged in the Order in the Letters of Administration and also in the Petition. The birth certificate of Alexander William the father of the claimant had been exhibited. Both his Birth Certificate and his Baptismal and Birth Certificate show that he was illegitimate therefore he could not inherit from his father Emilien Mr. Straughn declared. He went on to admit that Emilien Joseph aka Emilien Joseph Severin was her grandfather being the father of her father but the defendants allege and evidence has shown that Joseph Severin was not the same person as Emilien Severin and hence could not be her grandfather.

- [72] The law as stated at the time even in the evidence of the Claimant is that Emilien Joseph her real grandfather as opposed to her imagined grandfather, died in the 1930's/1940's. Her father, William Alexander being illegitimate could not succeed to the estate of Emilien Joseph because the law did not permit it Mr. Straughn submitted. The change in the law in 1991 was not retroactive. Consequently, the fact that the Claimant believed that Joseph Severin also known as Emilien Severin also known as Emilien is her grandfather is irrelevant as the fact of the matter is he was not.
- [73] Mr. Straughn further pointed out that William Alexander had filled a claim form for the family of Joseph Severin. He did not claim it for himself so that the fact that the Land Registration shows in care of William Alexander did not mean that William Alexander has a proprietary interest equitable or otherwise in that property. It does not show that. Therefore this could not be used as the basis for claiming a proprietary interest. It was purely for administrative purposes Mr. Straughn asserted and I fully concur. If someone needed to know something about the land this was a contact person. It certainly is not evidence of proprietorship, legal or equitable.
- [74] To assert therefore that the Land Register showed Joseph Severin in care of William Alexander meant that the land belonged to or was owned by William Alexander, would be erroneous and untrue because he had no claim whatsoever. Besides that scrutiny of the blood relationship reveals that he was in fact the illegitimate son of Emilien Joseph. Examination of the relevant documentary exhibits displayed confirm that he is not the legitimate child of Emilien Joseph. So that what the Claimant believes is irrelevant if it is not fact as Mr. Straughn aptly puts it. It does not make it truth in other words.
- [75] The crux of the matter is that when one looks at the Vesting Deed and the Letters of Administration one gets the impression that Joseph Severin and Emilien Joseph Severin are one and the same person. But that certainly was not true Mr. Straughn contended. And if it is not true then it would be fraudulent.

The question is does this necessarily follow? I would think not generally but each case would ofcourse turn on its own facts and circumstances.

[76] At the end of the day the Court finds that the preponderance of the evidence and the cogency of the arguments propounded by Mr. Straughn warrant that leave be granted to the Defendants/Applicants to move for leave to improbate the Claimant/Respondent's designated documents to wit:

(1) Letters of Administration dated 14th August 2007 granted to Elizabeth William in the Estate of the late Joseph Sever aka Emilien Severin Joseph, and

(2) Designation and Vesting Deed registered at the Land Registry as Instrument Number 2893 of 2008 upon which the Claimant has instituted her Claim SLUHCV2008/0938 against the Defendants;

on the grounds that he said Grant of Letters of Administration obtained by the Claimant was plainly fraudulently obtained and the Designation and Vesting Deed was also clearly fraudulently executed.

Leave to proceed by improbation of the designated documents granted accordingly. Claimant/Respondent to pay costs of the application.



Ephraim Georges
High Court Judge [Ag.]