

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHPB 2011/0091

FRANCISCA HIPPOLYTE A.K.A. JEANETTE HIPPOLYTE

Claimant

and

JAMIL LEO MCDONLAD

(PROPOSED ADMINISTRATOR OF THE DECEASED LEO HIPPOLYTE)

Defendant

Appearances:

Synther Chitolie for the Applicant

Donna Jacobie for the Respondent

2012 October 9

2013 April 18

JUDGMENT

[1] **BELLE J.** Jamil Leo McDonald petitioned the court on 24th March 2011 to be appointed Administrator of the Estate of the late Leo Hippolyte for the purpose of fully and finally completing the administration of the Deceased's succession.

[2] In his affidavit in support of the Petition Jamil Mc Donald stated the he was the son on the Deceased; that the Deceased died as a single man on the 5th day of October, 2008 and that the Deceased died leaving as his heirs at law and legal representatives the following namely:-

i Jamil Leo MacDonald – son

ii Cleopatra Veronica Sphara McDonald – daughter.

[3] The Petitioner also deposed to the fact that the heirs had consented that the Petitioner make application for Letters of Administration in the Estate of the Deceased.

The Petitioner's petition was met by the Applicant's Francisca Hippolyte's application filed on March 29th 2012.

[3] In her application Ms Hippolyte asked for an order that the Defendant / Respondent, Jamil Mc Donald not be given the liberty to proceed with the application for letters of administration and /or alternatively that the application for letters of administration by the Defendant/ Respondent be set aside.

[4] Among the grounds cited in support of the application to set aside any grant of letters of administration were (a) that the Claimant/ Applicant was the lawful sister of the Deceased Leo Hippolyte and had entered Caveat against the application for Letters of Administration referenced SLUHPB2011/0091 by the Defendant/ Respondent in the estate of the deceased.

[5] The Applicant's second ground of substance was that the Defendant/ Respondent was not the lawful child of the Deceased Leo Hippolyte and that the Deceased was single and had no children.

[6] In her affidavit in support of the Application the applicant deposed that the Deceased is her brother and they had a close relationship in his lifetime and that she took care of him during his long illness until his death. Ms Hippolyte stated that she did not know the Claimant and that he was not the lawful son of the Deceased. Finally the Applicant repeated what she had said in the application which is that the Deceased was single and had no children in his lifetime.

[7] This action had been initiated by the Applicant's Caveat filed on 1st December, 2011. In response the Defendant filed a warning notice dated 6th January, 2012.

[8] On 2nd July, 2012 the court ordered the parties to file and serve written submissions by 31st July, 2012. The Court heard arguments and relied on the submissions filed by the parties.

[9] The issues of fact and law which emerged in the process are as follows.

1. Is the Petitioner/ Respondent the son of the Deceased?
2. If the Petitioner is the deceased's son is he entitled by law to be Administrator of the Estate of the Deceased?
3. Is there an order of priority by which lawful heirs qualify for the right to apply for letters of administration of a deceased's person's estate?

[10] **Arguments on facts**

The Applicant's counsel argued that the respondent's application for Letters of Administration exhibited no evidence that the Deceased was the Respondent's father since the Deceased's name did not appear in his or his sister's birth certificates.

[11] The Applicant's counsel also argued that the deceased took no lawful action nor initiated any process such as marriage or rectification to prove that the respondent was his son.

[12] Counsel argued that these steps would have been facilitated by Articles 41A and 45 of the Civil Code. Counsel argues on her client's behalf that the Respondent's advertisement asking for consent by interested persons is contradictory and unnecessary and implies that the Respondent is aware that other persons are entitled to apply for letters of administration and that the Respondent is not.

[13] In further argument the Applicant's counsel argued that Article 541 of the Civil Code states that intestate succession is divided into the legitimate succession which is conferred by law upon a surviving spouse capable of inheriting and lawful relatives and the irregular succession when, in default of a surviving spouse capable of inheriting and lawful relatives, its devolves upon others.

- [14] The Applicant's counsel argued that rules for devolution of succession are established in Articles 557-579 of the Civil Code and at Article 1016 of the Code of Civil Procedure. These rules provide that the Ascendant of the Deceased (being the Claimant/Applicant) inherit the deceased's succession to the exclusion of the Defendant.
- [15] Counsel submitted that the criteria for intestate successions are established by Articles 549 and 550 which provide that intestate successions pass to the lawful heirs in the order established by law; in default of such heirs they devolve in the manner provided in Article 579. Lawful heirs of the Deceased therefore prevail over the provisions for irregular succession in Article 579.
- [16] According to Counsel for the Applicant the order of succession by Law as is stated in Article 557 of the Civil Code is as follows:
- (i) Spouse capable of inheriting
 - (ii) Children and the descendants of the deceased
 - (ii) Ascendants of the deceased
 - (iv) Collateral relations
 - (v) Irregular successions
- [17] There appears to be no dispute that the Applicant is the sister of the Deceased. Counsel argues that this enables the Applicant to apply for letters of Administration while the Respondent does not qualify.
- [18] Counsel appears to argue that in the event that the respondent is able to prove that he is an illegitimate son of the Deceased he would be able to apply only for an irregular succession. But the ascendant sister of the Deceased would rank higher in the order of succession and exclude irregular succession in the circumstances.
- [19] In these premises the Applicant repeated her claim and asked to be allowed to proceed with the application for letters of administration

[20] **Respondent's Arguments**

The Respondent disagreed with the Applicant on points of both fact and law. Firstly the respondent argued that the evidence produced proves as a matter of fact that he and his sister were the children of the Deceased based on statements made by their mother and others who knew the Deceased and the household of the Deceased in which they resided with their mother who was the Deceased's common law wife.

[21] On the issue of qualification as a son, counsel argues that Article 579 of the Civil Code provides the necessary legal basis for his application for Letters of Administration. The Article stated as follows:

Article 579 (1):

"If a deceased being a single man or single woman dies leaving children his or her succession falls to them in equal shares."

Article 579(7) states:

"For the purposes of this Article, a person shall be regarded as the child of the deceased if:

- (a) he, at any time was a member of the deceased's household as his child;
- (b) there is or was in relation to him, a maintenance order against the deceased as his putative father under the Affiliation Act;
- (c) the name of the deceased appears as his father on his Birth Certificate;
- (d) the deceased in his lifetime contributed to his maintenance as his father;
- (e) the deceased has been adjudged by a court of competent jurisdiction to be his father;
- (f) the deceased in his lifetime consented to that persons assuming the surname of the deceased as his father; or

(g) the persons at the instance of the deceased assumed the surname of the deceased as his father evidenced by a deed poll pertaining to a notice change of name."

[22] Counsel for the respondent submits and I agree that there is no general order of succession but different orders of succession by virtue of Articles 557-561, Articles 567(A) to 578 and Article 579. The articles set out a list of lawful heirs and their entitlement to the deceased's estate under different scenarios.

[23] Counsel submits and again I agree that the scenario with which we are concerned here is that of a succession of the estate of a "single man." A single man is defined in Article 579 (6) (B) as a man who has never been married.

[24] The children of a single man inherit as is outlined above in equal shares. In the case of a single man the brother or sister cannot rank first in heritable degree over the children of the deceased in light of Article 579 (1).

[25] I am also satisfied that Mason J (as she then was) in **Niles Nathaniel v Henry Nathaniel** SLUHCV2006/0118 applied Article 579 in similar terms to circumstances of the three sons of a single woman.

[26] I have no difficulty accepting the Respondent's evidence which proves that the deceased was his father. This evidence includes the Respondent's affidavits, the affidavit of Marilyn McDonald the Respondent's mother to the effect that the applicant and his sister are the children of the Deceased and the affidavits of Marcellus Joseph and Cuthbert Vincent which also support the Respondent's contention. I consequently make the following order:

[28] The Applicant's application of March 29th 2012 is dismissed and the Respondent shall be permitted to proceed with his application for grant of Letters of Administration.

- [28] The Caveat filed on 1st December 2011 to prevent the Respondent from obtaining Letters of Administration shall be removed forthwith.
- [29] The Applicant is to pay the Respondent's costs of the application pursuant to Part 65 of the CPR 2000.



Francis H V Belle
High Court Judge