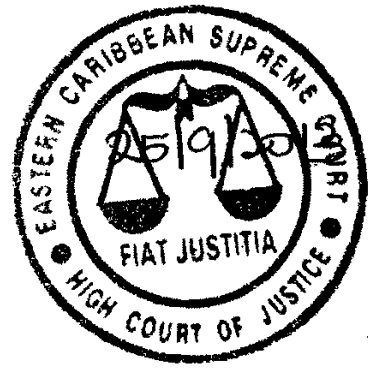


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 113 OF 2013



BETWEEN:

MYROL WEEKES

Applicant

v

**CYPRIAN WEEKES
NORMAN WEEKES**
(Executors of the Estate of Vincent Weekes, deceased)

Respondents

Appearances: Mr. C.B. Williams for the Applicant.
Mr. J. Martin for the Respondents

2013: July 15
September 25

JUDGMENT

- [1] **THOM, J:** The Applicant Myrol Weekes and the Respondents Messrs. Cyprian Weekes and Norman Weekes are all children of Vincent Weekes deceased and beneficiaries of his estate.
- [2] On May 29, 2013 Mr. Myrol Weekes made application to the Court pursuant to Part 67.4 of CPR 2000 for sums totaling \$51,824.46 being expenses he alleged he incurred as Executor in the administration of the estate of Vincent Weekes.
- [3] Mr. Vincent Weekes died on the 26th day of July 2007. In his last will dated the 2nd day of January 2004, Mr. Vincent Weekes named Mr. Myrol Weekes as executor.
- [4] On December 4, 2008 Mr. Myrol Weekes obtained Probate of the said will.

- [5] In 2013, the estate of Mr. Vincent Weekes not having been distributed to the beneficiaries, Mrs. Olga Weekes, wife of Mr. Vincent Weekes and a beneficiary of the estate of Mr. Vincent Weekes instituted Claim No. 138 of 2010 in which she sought among other things the removal of Mr. Myrol Weekes as executor.
- [6] On May 13, 2010 His Lordship Mr. Justice Bruce-Lyle ordered among other things that a new executor be appointed.
- [7] Mr. Myrol Weekes alleges that he has incurred expenses in executing his duty as Executor and he has not been refunded his expenses by the new Executors, Mr. Cyprian Weekes and Mr. Norman Weekes.
- [8] Messrs. Cyprian Weekes and Norman Weekes dispute the quantum claimed by Mr. Myrol Weekes.

ISSUE

- [9] The issue to be determined by the Court is what expenses if any Mr. Myrol Weekes is entitled to be reimbursed.

SUBMISSIONS

- [10] Mr. C.B. Williams referred the Court to Section 20 of the Trustee Act Chapter 494, the text **Probate and the Administration of Estate – A Practical Guide**¹ by Phillip S.A. Rossdale and the case of **Re. Grimthorpe**² and submitted that Mr. Myrol Weekes is entitled to all of his expenses, which were properly incurred in the course of the administration of the estate of Mr. Vincent Weekes.

¹ Sweet & Maxwell 1996

² [1958] Ch. 615

[11] In response, Mr. Martin referred the court to the case of *Josephine Henry Louisy, Matthew Henry Louisy and Vilma Henry Louisy v Martha Louisy and Raymond Joseph Henry Louisy*³ and submitted that the burden of proving that the expenses were reasonable and that they were properly incurred is on Mr. Myrol Weekes. The evidence of Mr. Myrol Weekes is unreliable as there are several inconsistencies. Some of the bills are duplicated, some expenses do not relate to the estate and several are for rental of vehicles and accommodation.

[12] Mr. Martin also submitted that unless provision is made in the will for remuneration, the Executor is not entitled to any allowance for his time and trouble in transacting business as Executor. In support of this proposition Mr. Martin relied on the case of *Maxine Herbert-Webster et al v Vernon Veira et al*⁴.

FINDINGS

[13] The principle that emerges from the legal authorities referred to by Counsel on both sides is that an Executor is entitled to be reimbursed expenses incurred in the proper performance of his duties.

[14] In the text *Parry & Clark – The Law of Succession*⁵ the Authors in referring to cases such as *Re Clemow*⁶; *Re Hall-Dare*⁷; and *Re Sebba*⁸ stated expenses recoverable by an Executor would include the following:-

- (i) the expense of obtaining probate or letters of administration;
- (ii) the costs of obtaining legal advice as to the administration of the estate;
- (iii) the cost of an administration action or other proceedings instituted for a proper purpose;

³ [1996] E.C.L.R. p. 206

⁴ AXAHCV 1990/0089

⁵ p. 412 – 413.

⁶ [1900] 2 Ch. 182

⁷ [1916] 1 Ch. 272

⁸ [1959] Ch. 166

- (iv) the expense incurred in collecting and preserving the assets of the deceased's estate; and
- (v) the expense incurred in ascertaining the deceased's debts and liabilities (including the cost of advertisements).

[15] Mr. Myrol Weekes in his affidavit deposed that he incurred three sets of expenses being:

- (a) A sum of \$21,056.06 for transportation, accommodation, Fed-Ex charges, and legal fees.
- (b) A sum of \$14,762.38 being airfares between Canada and Saint Vincent and the Grenadines.
- (c) A sum of \$15,826 being expenses incurred in relation to the estate in Saint Vincent and the Grenadines and Canada.

[16] Having reviewed the affidavit of Mr. Myrol Weekes and having examined his evidence, I agree with Mr. Martin that in several instances Mr. Myrol Weekes' testimony lacked specifics of the reason for the expenses. Some receipts bore no names and some were duplicated.

[17] In relation to the claim for \$21,056.06, the receipts exhibited in support of this claim totaled \$10,465.00.

[18] In relation to the claim for \$14,726.38, receipts were exhibited showing that Mr. Myrol Weekes traveled to Saint Vincent each year from 2007 to 2011.

[19] In relation to the claim for \$15,828.46, a bill for this sum was exhibited. No receipts were exhibited showing payment. Further, the vast majority of the expenditure was incurred during the period when Mr. Myrol Weekes was removed as Executor. Also, the work for which sums were billed related to matters in Saint Vincent and the Grenadines and there was already an Attorney acting on behalf of the estate. I therefore do not find these to have been incurred in the proper performance of his duties as Executor. Mr. Myrol Weekes is therefore not entitled to be reimbursed for these expenses.

- [20] Having reviewed the evidence and the various receipts, I find that it was proper for Mr. Myrol Weekes to travel from Canada where he resides to St. Vincent and the Grenadines to make arrangements for the probate of the will. This would have necessitated expenses of a return air fare ticket, accommodation and rental of a vehicle. Having regard to the provisions of the will and the size of the estate I find that a period of one week was adequate time for Mr. Myrol Weekes to make the necessary arrangements for the probate of the will.
- [21] I find that Mr. Myrol Weekes is entitled to be reimbursed his expenses incurred for the airline ticket in July 2008 in the sum of CAN\$900.00. He is also entitled to be reimbursed his expenses for one week's stay at Elizance Guest House and Apartments in the sum of EC\$665.00 and rental for one week at the rate of EC\$100.00 per day, a total of \$700.00.
- [22] I also find that it was necessary for Mr. Myrol Weekes to travel to Saint Vincent after probate was granted to make the necessary arrangements for the distribution of the estate. This would have necessitated expenses of one return airline ticket, accommodation and rental for one week.
- [23] I therefore find that Mr. Myrol Weekes is entitled to be reimbursed his expenses for one airline ticket in September 2009, probate having been granted in December 2008. The receipt shows the cost as being CAN\$1,752.00. He is also entitled to be reimbursed the sum of US\$300.00 for accommodation. A receipt was exhibited of payment to Mr. Keith Marecheau, rental at the rate of EC\$100.00 per day for seven days, a total of EC\$700.00 and \$85.00 for gasoline (a receipt showing this sum was expended was exhibited).
- [24] I also find that Mr. Myrol Weekes is entitled to be reimbursed the sum of EC\$1,725 for legal fees. He was removed as Executor on an ex parte application. In my opinion it was proper for Mr. Myrol Weekes to seek to have the order discharged.

[25] In conclusion, I find the following sums to be expenses properly incurred by Mr. Myrol Weekes in the performance of his duties as Executor of the estate of Vincent Weekes:

- (a) Two return airline tickets at the cost of CAN\$900.00 and CAN\$1,752.00.
- (b) Two weeks' accommodation at the cost of EC\$665.00 and US\$300.00.
- (c) Transportation costs of EC\$1,400.00, gasoline in the sum of EC\$85.00, and licence fees in the sum of EC\$65.00.
- (d) Legal fees in the sum of EC\$1,725.00.

These expenses are to be borne by the beneficiaries of the estate.

[26] In relation to costs in view of the fact that Mr. Myrol Weekes' claim was for EC\$51,828.46, and in view of the fact that the expenses allowed amount to less than one-quarter of what was claimed, it was quite proper for the Executors not to have paid him the sum claimed. In these circumstances I am of the opinion that each party should bear their own costs.

[27] It is ordered:

- (1) The Executors shall reimburse Mr. Myrol Weekes the following sums:
 - (a) The cost of two return airline tickets from Canada to Saint Vincent and the Grenadines being CAN\$2,625.00, equivalent of EC\$6,949.86.
 - (b) Two weeks' accommodation being a total of EC\$1,478.00.
 - (c) Transportation cost for two weeks being a total of EC\$1,400.00.
 - (d) Fees for licence in the sum of EC\$65.00 and gasoline in the sum of EC\$85.00.
 - (e) Legal fees in the sum of EC\$1,725.00.A total sum of EC\$11,702.86.

- (2) Each party shall bear their own costs.


.....
Gertel Thom
HIGH COURT JUDGE