THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE
(PROBATE)

PROBATE NO. 46 of 2011

IN THE MATTER OF THE ESTATE OF JOHN PETER RICHARDSON AND

IN THE MATTER OF THE LETTERS OF ADMINISTRATION AND PROBATE ACT RSA C L45

Appearances:

Ms. Jenny Lindsay for the Appellant Mr. Simeon Fleming.

---

2014: January 28

---

RULING

[1] MATHURIN J.: This is an appeal against the decision of the Registrar refusing to grant Letters of Administration De Bonis Non to the Appellant Mr. Simeon Fleming (Mr. Fleming) on the basis that she had no authority to grant same.

[2] Briefly, the background to this application, as is relevant, is that Eliza Connor had two children, Sarah Ann Connor aka Sarah Ann Richardson (Sarah) and John Peter Richardson (John) to whom her property in registration section 18011B parcel 4 devolved in equal shares. Sarah died intestate in 1917 and her daughter Catherine Fleming (Catherine) obtained Letters of Administration in her estate around the 27th February 1979. John died intestate on the 24th October 1976. At the time he was unmarried without parents, grandparents, aunts, uncles, siblings or children. Catherine was granted Letters of Administration in his estate at the

same time that she was granted Letters of Administration for Sarah in February 1979.

[3] Catherine died on the 23rd October 2000 without the estate of John being administered and it is against this backdrop that Mr. Fleming who is her son, applied to the Registrar for a Grant De Bonis Non Administratus in respect of the portion of the estate that was not administered. A Grant De Bonis Non Administratus becomes necessary upon the death of a previous grantee where the estate is not completely administered and is issued to a new personal representative entitled to apply.

[4] The basis of the Registrar's refusal was set out in her reasons filed on 4th November 2013. In essence, she was not of the view that the Registrar had the power to issue the Grant to a person who did not fall within the listed persons entitled to apply for letters of administration in accordance with the Letters of Administration and Probate Act R.S.A c L45 and the Intestates Estate Act R.S.A c 130.

APPEAL

[5] Mr. Fleming has appealed the decision of the Registrar and the grounds upon which he relies include the Registrar's failure to consider and apply section 22 of the English Non-Contentious Practice Rules 1987 as amended. Another ground is that the Registrar did not give adequate weight to the fact that Sarah's children are the only surviving blood relatives of John and that Catherine had already been granted Letters of Administration for John's estate in 1979. Further, Mr. Fleming states that the Registrar did not exercise her discretion reasonably, justly or fairly to issue the Grant necessary to complete the administration of John's estate that had already begun. Mr. Fleming has asked that the Court set aside the decision of the Registrar and that the Grant of Letters of Administration de Bonis Non be issued to him in the estate of John.

[6] At this point, I would have to note that the fact that Catherine had Letters of Administration issued to her is of no actual import to the application of Mr. Simeon as the issuance of a Grant De Bonis Non will only be granted to a person who would normally be entitled to apply for Letters of Administration, a factor governed by the Letters of Administration and Probate Act.

THE LAW

Letters of Administration and Probate Act R.S.A c L45

[7] The powers of the Registrar in dealing with an intestate's estate are governed by the Letters of Administration and Probate Act, specifically section 2(1) which states that;

> "*In any case where a person dies intestate, an application may be made to the Registrar by the husband, wife, issue, father, mother or issue of the father or mother of the deceased person for grant of letters of administration in respect of the deceased's estate."*

I agree that Mr. Fleming does not fall within the categories listed as there is no provision for an application by issue of the siblings of the deceased and as such, the Letters of Administration and Probate Act does not provide a jurisdiction for the Registrar to grant letters of administration or a Grant De Bonis Non to Mr. Fleming.

Intestates Estates Act R.S.A c130

[8] Section 3(1)(e) of The Intestates Estates Act details the manner of distribution of an intestate's estate on intestacy where there is no husband, wife, issue or parents as in this situation with the Estate of John. The section reads as follows;

> *"(e) if the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely-*

(i) *First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate,* (This does not apply as John's sister Sarah had predeceased him in 1917)

(ii) *but if no person takes an absolutely vested interest under such trusts, then secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate,* (This does not apply as there is no evidence of siblings of the half-blood)

(iii) *but if no person takes an absolutely vested interest under such trusts, then thirdly, for the grandparents of the intestate and, if more than one survives the intestate, in equal shares,* (Not applicable)

(iv) *but if there is no member of this class, then fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate,* (Not applicable)

(v) *but if no person takes an absolutely vested interest under such trusts, then fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the half-blood of a parent of the intestate),* (Not applicable)

(vi) *but if no person takes an absolutely vested interest under such trusts, then sixthly, for the surviving husband or wife of the intestate absolutely;* (Not applicable) *and*

*(f) in default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown as bona vacantia, and in lieu of any right to escheat."*

[9] A reading of this section makes it clear that in accordance with how the residuary estate of an intestate is distributed under the Intestates Estates Act, Mr. Fleming

does not stand as a beneficiary to John's estate. The Act indicates that in these circumstances where no one could take an absolute interest in John's estate, his residuary estate belonged to the Crown as bona vacantia. Section (3)(2) of the Act gives the Crown a discretion to provide for dependents, related or not to the intestate and other persons for whom the intestate would reasonably have provided, out of the whole or any part of the estate. There is a clear regime, in my view, as to the residuary estate of an intestate which falls outside of the listed categories under this Act and therefore does not permit the exercise of discretion by the Registrar or the High Court.

Section 22 of the English Non-Contentious Practice Rules 1987

[10] Counsel for Mr. Fleming, Ms. Lindsay, grounds her appeal on the failure to consider the English Non-Contentious Practice Rules 1987 (UK Rules), in particular section 22. She asserts that these Rules have been adopted pursuant to section 9 of the Eastern Caribbean Supreme Court (Anguilla) Act which states:

> *"The jurisdiction vested in the High Court in civil proceedings, and in probate, divorce, and matrimonial causes shall be exercised in accordance with the provisions of this Act and any other law in operation in Anguilla and the rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice in England."*

[11] Ms. Lindsay asserts that there are no local rules of court regulating the practice and procedure to be followed by persons wishing to commence or continue probate proceedings and as such the UK Rules should be followed and applied. I have no doubt that in the absence of local rules of court regulating the procedure that the UK Rules should be followed. This has indeed been the practice and procedure adopted and ruled upon in several matters before the court. Ms. Lindsay refers in submissions to Hugh Marshall Snr v Antigua Aggregates Ltd and Ors, Civil Appeal 23 of 1999, Antigua and Igor Kippers and Ors v Stanford

International Bank Limited, HCVAP2010/0025, in which the Court of Appeal in both instances recognized that in the absence of local statutory provisions and rules regulating practice and procedure, the relevant UK Rules would apply.

[12] Section 22 of the UK Rules states as follows;

> *(1) Where the deceased died on or after 1 January 1926, wholly intestate, the person or persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following classes in order of priority, namely-*
>
> > *(a) the surviving husband or wife;*
> >
> > *…*
> >
> > *(e) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased."*

[13] Ms. Lindsay states that it is pursuant to the category of issue of any deceased brother or sister of the whole blood who died before the deceased as a person who can file for a grant under the UK Rules that Mr. Fleming can apply for the grant in John's estate as did his mother Catherine. Bearing in mind that these UK Rules are enacted primarily for the application of the Administration of Estates Act 1925 and the Intestates' Estates Act 1952 of England, I have difficulty in accepting the proposition that the adoption of the UK Rules can create a new category of beneficiary not included by statute in the Anguillan legislation i.e. the Letters of Administration and Probate Act and the Intestate Estates Act. I do not believe that the intended purpose of the reception clause in the Eastern Caribbean Supreme Court (Anguilla) Act (ECSC Act) was to adopt rules that would in essence cause an amendment to the substantive law in Anguilla. Also, the substantive Law of England cannot be imported into Anguilla unless there is a clear implication under the domestic law that this should be so and I have noted no such provision

[14] I note the words of Singh JA in the Antigua Aggregates case above when he said in relation to a similarly worded provision to that in the ECSC Act that;

> *"This provision did not mandate a total and slavish acceptance of the English Rules. It suggests that the jurisdiction should be exercised as nearly as may be, in conformity with the law and practice for the time being administered in the High Court of England. This in my view, suggests, that only those rules that could with convenience, be used in Antigua, should be adopted."*

[15] I am not of the view that section 22 of the UK Rules is one that can be used with convenience to the extent that it would create a category of Applicant not considered by the Legislature in Anguilla in the Intestates' Estates Act or the Letters of Administration and Probates Act. In the circumstances, the appeal against the decision of the Registrar not to grant Letters of Administration De Bonis Non Administratus to Mr. Fleming is hereby dismissed with no Order as to costs.

Cheryl Mathurin
High Court Judge