

THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHPB2011/0046

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

2014: February 25th

RULING

[1] **MATHURIN, J:** On 11th February 2014, Ms Lindsay filed an application for an Extension of Time to file a Notice of Appeal to appeal the decision of this Court determining a Probate appeal from the decision of the Registrar to refuse to issue a Grant of Letters of Administration De Bonis Non to the Applicant Mr. Simeon Fleming. The application was set down for hearing to the 25th February 2014 and an amended Notice of Application was filed on the 21st February 2014 requiring an extension of time to seek leave and file a Notice of Appeal.

[2] The relevant grounds of the application are stated as follows;

"2. *The appeal is novel and further research is required as to how the appeal is to be brought. More time is required to consider the appeal. One of the questions that must be considered in bringing a Probate Appeal from the High Court Judge to the*

Court of Appeal is whether leave is necessary or not and whether it is a procedural appeal or not. There are no known precedents.

3. *CPR Rules are not relevant to Probate Appeals therefore it is not clear whether the appeal must be filed within 14 days of the decision which is by no later than 11th February 2014 or not. This application is filed to safeguard the Appellants position. 42 days is required because there is no precedent on the issue in the Eastern Caribbean Supreme Court Circuit. The draft new rules out of its Headquarters in St. Lucia does not deal with the point either, although the Rules do allow the whole blood issue to administer the estate of a deceased sibling."*

3. The Civil Procedure Rules 2000 by virtue of Rule 2.2 do not apply to non-contentious probate proceedings however the Eastern Caribbean Supreme Court (Anguilla) Act (hereafter "Supreme Court Act") does make provision for Appeals from the High Court in civil matters. Section 29(1)(b) of the Supreme Court Act provides that subject to the provisions of that Act or any other enactment,

"(b) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgment or order of the High Court and for the purpose of, and incidental to, the hearing of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court."

4. The Supreme Court Act by section 29(2) specifies instances where no appeal is permitted, that is;

"(a) from any order made in any criminal cause or matter except as provided by this Act;

(b) from an order allowing an extension of time for appealing from a judgment or order;

(c) from an order of a judge giving unconditional leave to defend an action;

- (d) *from a decision of the High Court or of any judge thereof where it is provided by any law that such decision shall be final; or*
- (e) *from and order absolute for the dissolution or nullity of a marriage by any party who having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal."*

These exceptions do not exclude an appeal to the Court of Appeal in the circumstances of the Probate matter in question.

5. The Supreme Court Act, section 29(3) further makes provision for when the leave of the judge making the order or the Court of Appeal is required. These provisos are as follows;

- (a) *"an order made with the consent of the parties; or*
- (b) *an order as to costs only where such costs are left to the discretion of the Court."*

The Supreme Court further provides that permission of the judge or the Court of Appeal is required from any interlocutory order or interlocutory judgment made or given by a judge.

6. In my view, an appeal from the decision of the Registrar to the High Court is clearly not an interlocutory order or interlocutory judgment of the Court. It is a final decision. An examination of the relevant sections of the Supreme Court Act therefore establishes that the leave is not necessary to bring an Appeal in these Probate proceedings. Further, I disagree that the point is a novel one as the applicable law is clear as to when leave is required. The application of that law to the present fact situation does not call for protracted consideration and does not justify the grant of an extension of time.
7. In the case of justifiable uncertainty as to whether or not leave was required, and in the wholly exceptional situation where the point could not have been researched and resolved by counsel in the time allowed by the rules for filing a notice of appeal, a course of prudence would have been to file Notice of Appeal and application for leave to appeal. The court is not encouraging this to be

done casually or loosely; there must be a real case of uncertainty which the diligent researches of counsel are unable to resolve. That, as I have noted, was not the case here. And, in this case, that course of prudence was not adopted.

8. However, even if (as the applicant conceives) the leave of the Court were required pursuant to the Supreme Court Act, I would be unable to grant an application for an extension of time within which to file a Notice of Appeal in circumstances where no leave has been obtained. The “appellant’s” failure to obtain leave to appeal leaves him debarred by the language of s 29 (4) of the Act: “no appeal shall lie”. The Court of Appeal is a creature of statute and an appeal to this court may be made only where statute confers the right to appeal. An appeal cannot exist unless a statute permits it to be brought. In other words, no appeal proceedings can be commenced until leave is granted. Any notice which may have been filed without leave being first obtained is of no effect and is completely valueless and void. It cannot be revived by the subsequent granting of leave. Therefore, it would not be competent for this court to grant an extension of time for filing a Notice of Appeal if, hypothetically, leave to file a notice of appeal was required as a condition precedent.
9. Accordingly, I refuse the application for an extension of time within which to file an application seeking leave to appeal and filing a notice of appeal.

Cheryl Mathurin
High Court Judge