

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2015/0071**

**IN THE MATTER OF AN APPLICATION UNDER THE REGISTRATION OF BIRTHS  
AND DEATHS ACT CAP 242 OF THE REVISED LAWS OF SAINT VINCENT AND  
THE GRENADINES 2009**

**- AND -**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 10 OF THE STATUS OF  
CHILDREN ACT CAP 243 OF THE REVISED LAWS OF SAINT VINCENT AND THE  
GRENADINES 2009**

**- AND -**

**IN THE MATTER OF AN APPLICATION BY ESTELLA JOHN (ALSO KNOWN AS  
ESTELLE JOHN) FOR A DECLARATION OF PATERNITY THAT THE  
RELATIONSHIP OF FATHER AND CHILD EXISTED BETWEEN LEON O'GARRO  
DECEASED AND HULDA O'GARRO DECEASED**

**BETWEEN:**

**ESTELLA JOHN (otherwise known as ESTELLE JOHN)**  
of Arnos Vale

**CLAIMANT**

**- AND -**

**RANDOLPH CARR**

**DEFENDANT**

Appearances: Mr Parnel R. Campbell Q.C. Counsel for the Claimant, and Ms Keisal  
Peters holding for Mr Carlyle Dougan Q.C. Counsel for the Defendant.

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2015: Jul. 13 & 15  
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## **JUDGMENT**

### **BACKGROUND**

[1] **Henry, J.:** Ms Estella John aka Estelle John<sup>1</sup> is the late Hulda O'garro's mother. Hulda O'Garro was Paul O'Garro's mother. Ms John applies by Fixed Date Claim<sup>2</sup> for a declaration that Leon O'Garro deceased is Hulda O'garro's father. Randolph Carr who has an interest in Leon O'Garro's estate opposes the grant of such declaration of paternity. He has applied<sup>3</sup> to the court for an order striking out Estella John's statement of case on the grounds that:

1. she has no reasonable ground for bringing the claim;
2. the affidavits in support disclose insufficient evidence to meet the standard of proof required by the Status of Children Act,<sup>4</sup> and
3. it is an abuse of the process of the court.

Ms John resists his application.

### **ISSUE**

[2] The issue before the court is whether Estella John's statement of case should be struck out?

### **ANALYSIS**

#### **Issue – Should Estella John's statement of case be struck out?**

[3] Randolph Carr's application to strike out Ms John's statement of case, is made pursuant to rule 26.3 (1) (b) and (c) of the Civil Procedure Rules 2000 ("CPR") which provides:

*"26.3 (1) In addition to any other power under these rules, the court*

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<sup>1</sup> Referred to hereafter as Estella John.

<sup>2</sup> Filed on May 11, 2015.

<sup>3</sup> By Notice of Application filed on July 8, 2015.

<sup>4</sup> Cap. 243 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

*may strike out a statement of case or part of a statement of case if it appears to the court that –*

*(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;*

*(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;”*

- [4] Rule 26.3 (1) gives the court a wide discretion to strike out a statement of case if it discloses no reasonable ground for bringing or defending the claim. The court may make the order of its own initiative or on an application, provided it gives any party likely to be affected, an opportunity to make representations.<sup>5</sup> In exercising its discretion, the court must consider the overriding objective to deal with cases justly.<sup>6</sup> The court will strike out a statement of case “*only in the most clear and obvious cases ... because it errs on the side of having trials on the merits of cases.*”<sup>7</sup> When considering such an application the court examines the particulars in the statement of case to ascertain if a cause of action is made out; but it is not necessary for the court to conduct a detailed and minute examination of facts, allegations in it or the documents exhibited.<sup>8</sup>

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<sup>5</sup> See CPR rule 26.2(1) and (2) which states:

“26.2 (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.”

<sup>6</sup> See CPR 1.2 which states:

“1.2 The court must seek to give effect to the overriding objective when it-

(a) exercises any discretion given to it by the Rules; or  
(b) interprets any rule.”

<sup>7</sup> Per Rawlins J (as he then was) in **Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177** at para. 6.

<sup>8</sup> **M4 Investments v CLICO (Barbados) Ltd. (2006) 68 WIR 65** at page 82.

[5] Even if the case is weak and appears unlikely to succeed, this will not provide a basis for striking out the claim if it discloses a cause of action or raises a question for the judge to decide. The court is not concerned with determining whether the claimant can prove his case.<sup>9</sup> I now turn to consider Mr Carr's application in light of those guiding principles and the applicable legislation.

[6] Estella John brought her application under section 10 of the Status of Children Act Cap 243 of the 2009 Revised Edition. She seeks:

1. a declaration that the relationship of father and child existed between Leon O'Garro deceased who died on September 27<sup>th</sup>, 2009 and Hulda O'Garro who was born on June 13<sup>th</sup> 1938 and who died on November 18<sup>th</sup> 1998, "*in accordance with **section 10 of the Status of Children Act Cap 243 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009***" ("the former Act"); and
2. an order directing the Registrar to enter the name Leon O'garro as father in the registry of births in respect of Hulda O'Garro's birth; and costs. (bold mine)

[7] Randolph Carr's attack on the application exclusively referenced the former Act. That Act has been repealed and replaced by a new Status of Children Act.<sup>10</sup> The new Act came into force on March 25, 2015, two months before Estella John filed her claim. Mr Carr limited his submissions to the meaning and effect of several provisions of the former Act and appeared not to have given any consideration to the current law, although its existence was brought to the attention of both parties at the hearing. The 2011 Act is substantially different from the former Act. For

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<sup>9</sup> See **Re: Davey v Benton [1893] 1 QB 185; Wenlock v Maloney [1965] 2 All E.R. 871, CA;** and **Lonhro Case [1991] 4 All E.R. 965.**

<sup>10</sup> Act No. 21 of 2011 which was assented to on May 23, 2011 by His Excellency Sir Frederick Ballantyne, Governor-General.

this reason, the arguments made on Mr Carr's behalf are not capable of being transposed to provisions of the 2011 Act. It is therefore unnecessary to consider them.

[8] Suffice it to so that Mr Carr's application centred on *dicta* emerging from the case of **Adolphus David McKenzie v David Sampson**<sup>11</sup> in which Saunders JA (as he then was) interpreted section 10 of the former Act and made a distinction between the standard of proof required for declarations of paternity:

1. *simpliciter* which is granted in cases where the applicant is uninterested in succeeding to property; and
2. where the applicant desires to inherit property on the strength of the declaration.

Justice Saunders declared that while the standard of proof for both is on a balance of probabilities, more cogent proof is required in cases concerned with claims to a deceased person's estate.

[9] As it turns out, Ms John relies on a non-existent statute as the legal basis for her claim. It is trite law that legislation which has been repealed is ineffective to confer rights or interests. Ms John's claim for a declaration of paternity discloses no cause of action as it has no legal basis. Her claim falls within the category of "clear and obvious cases" referred to previously. Although learned Queen's Counsel for Ms John was invited to address the court on the provisions of the 2011 Act and its relevance to the proceedings, no such submissions were made. In the circumstances, Ms John's application must fail. I accordingly order that Ms John's statement of case be struck out pursuant to CPR 26.3 (1) (b) because it discloses no reasonable ground for bringing the claim.

## **ORDER**

[10] It is ordered as follows:

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<sup>11</sup> SVGHCVAP2003/0012.

1. Estella John's statement of case is struck out and her claim is dismissed.
2. As agreed by the parties, there is no order as to costs.

[11] I wish to thank both counsel for their submissions.

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**Esco L. Henry**  
**HIGH COURT JUDGE**