IN THE EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: DOMHCV2016/0132

BETWEEN:-

PATRICIA BEDMINSTER

Claimant

And

MARIANNA CUFFY

Defendant

RULING

Appearances:

Miss Cara Shillingford for the Claimant
Mr Stephen Isidore with Miss Jordanne Marie Ebanks of CC Law Practitioners for the Defendant

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2017: March 30
April 24
August 15

RULING

[1] **STEPHENSON J.:** The Claimant is the daughter of the Late Haristeed Bedminster who died intestate in June 1981. She has brought suit again the Defendant claiming possession of a portion of land located in St Joseph and for an order of court canceling the Certificate of Title (the COT) registered in the name of the Defendant and also for an order that the said portion of land be registered in her name or alternatively in her deceased father's name.

[2] When the claim was initiated in April 2016 she made the claim as beneficial owner of a portion of land owned by her father located in the Parish of St Joseph.[1]

[3] In her statement of claim filed on the 18th day of April 2016, the Claimant stated inter alia that she is one of the children of the late Haristeed Bedminster and one of the heirs of his estate and that she has applied for Letters of Administration of the estate of her late father.[2]

[4] On the 27th September 2016, the Claimant applied for an order of this court appointing her as a representative of the estate of Haristeed Bedminster. In the affidavit sworn in support of the application it was averred that the application for letters of administration was made 19th May 2015, however, the said process has not been completed as Estate duty has to be paid and the Claimant was unable to afford same at the time of the filing of the application on the 27th September 2016.

[5] It was further averred that the claim in the case at bar is for possession of land and that there is a time limit and the Claimant wished to make the application before the statute of limitation barred the bringing of the claim.

[6] On the 7th November 2016, the Defendant Mariana Cuffy filed an application seeking a declaration that the case brought by the Claimant is a nullity and that in the circumstances that the Claim be struck out and for costs.

[7] This matter came before the court on the 9th December 2016 and it was ordered that each party file affidavit in support of their respective applications on or before the 15th January 2017 and that each party file and serve brief written submissions in support of their positions regarding the two applications before the court. The matter was also fixed for the 30th March 2017 for hearing and each party was allotted a time period of 45 minutes to address the court.

[8] Written submissions were filed on behalf of the Defendant and up until the 29th day of March 2017, the Claimant did not filed any written submissions.

[1] See paragraph 3 of the fixed date claim filed on the 18th April 2016
[2] See paragraphs 1 & 2 of the Statement of Claim filed on the 18th April 2016

THE ISSUE:

[9] The main issue to be addressed in my view is whether or not the claim as filed by the Claimant is a nullity. Depending on the ruling in this regard the court may then have to consider whether or not to grant the Claimant's application to be appointed as representative of her father's estate to continue the proceedings.

[10] The Defendant essentially challenges the locus standi of the Claimant to bring the matter her having not yet obtained a grant of letters of administration to her father's estate.

[11] The Defendant relies on the principle that "*An administrator as such has no cause of action vested in him* <u>*before*</u> *he had obtained letters of administration. Neither does the doctrine of relation back of an administrator's title to his intestate's property to the date of the intestate's death apply to an action commenced by the administrator as such before the grant is made".*

[12] Learned Counsel on behalf of the Defendant relied on the law as stated in the case of **Ingal –v- Moran**[3] by Luxmoore LJ

> *"…the only question arising in the appeal is whether the doctrine of relation back which is well established in respect of an administrator's title to a deceased's estate has any application to the status of a plaintiff who can only sue in representative capacity, in an action started before the grant of letters of administration. It is, I think, well established that* <u>*an executor*</u> *can institute an action before probate of his testator's will is granted and that, so long as probate is granted before the hearing of the action, the action is well constituted although it may in some cases be stayed until the plaintiff has obtained his grant. The reason is plain The executor derives his legal title to sue from his testator's will; the grant of probate before the hearing is necessary only because it is the only method recognised by the rules of court by which the executor can prove the fact that he is the executor. If any authority for this is required it is to be found in the judgment of Lord Parker, in* ***Chetty v Chetty****. An administrator is, of course, in a different position for his title to sue depends*

[3] [1944] 1 ALL E R 97

solely on the grant of administration. It is true that when a grant of administration is made the intestate's estate including all choses in action vests in the person to whom the grant is made, and the title thereto then relates back to the intestate´s death, but there is no doubt that both at common law and in equity in order to maintain an action the plaintiff must have a cause of action vested in him at the date of the issue of the writ. Lord Parker, in the case to which I have already referred, states this to be the law in the plainest terms. The Defendant in the court below referred to an unreported case, ***Tattersall v Ashworth****, heard by Phillimore J, in King's Bench Chambers, which is cited in the Annual Practice 1943, at p 181, and also in the Yearly Practice Of The Supreme Court For 1940, at p 14. The relevant passage in the Annual Practice is as follows:*

'An executor is entitled to sue in the High Court before obtaining probate, he being named in the will as executor, and the grant of probate being only a completion of his title. But an administrator is not entitled to sue King's Bench Division until administration is granted, for until such grant there is no certainty that there is an intestacy, nor that if there is an intestacy any particular person will be administrator. On this ground judgment under Ord. 14 on a writ issued by a person suing as administrator before grant of letters of administration, was set aside with costs, and unconditional leave to defend given; although between the issue of the writ and the order for judgment the plaintiff had obtained the grant of administration ***Tattersall v. Ashworth (unreported),*** *Phillimore J., in Chambers, July 2, 1903) ... In Chancery Division an administrator may sue before grant of administration, provided that letters of administration are produced at the hearing.'"*[4]

[13] Learned Counsel on behalf of the Defendant also relied on the decision in **Rebecca *Millburn-Snell et al v Susan Cecile Evans*** [5] where the putative Claimant died shortly before the commencement of proceedings. His relatives, purportedly acting as personal representatives, without any grant of probate, brought proceedings. When the position became clear to the Defendants they sought to strike out the claim. The Court of Appeal held that because the

[4] Pages 101 to 102 ibid
[5] [2012] 1 WLR 41

Claimants had commenced proceedings purportedly on behalf of the intestate's estate without a grant of letters of administration, the proceedings were under CPR 19.8(1) an incurable nullity and were struck out. The proceedings could not be cured by the fact that subsequent to the commencement of the proceedings there was a grant of administration.

[14] It was submitted on behalf of the Defendant that CPR19.8(1) of the English CPR is similar in effect to Part 21.1 CPR 2000 and therefore in the circumstances of the case at bar the claim as brought by the Claimant is a nullity incapable of being cured by the application to be appointed as representative of the estate. It was submitted that the rule was not intended to cure defective claims but simply to allow a person to prosecute validly instituted proceedings towards trial when a relevant death requires the appointment of a representative that it does not operate to correct deficiencies in the matter in which proceedings have been instituted.

Court's consideration

[15] There is no doubt that it is well established that any person who wishes to institute a claim on behalf of an intestate estate must first obtain a grant from the court to do so.

[16] Before me is a matter commenced by a Claimant in her capacity as a beneficiary of an estate. After commencing proceedings she made an application to be appointed as Personal Representative of the estate to which she claims to be a beneficiary.

[17] It has been stated on her behalf that the reason that she has not been able to obtain letters of administration is that she has been unable to pay estate duty which must be paid in order for her to obtain a grant.

[18] It is the Defendant's application and submission that the claim is a nullity based primarily on the ground that the Claimant does not have the locus standi to bring the matter.

[19] It is noted that at the time commencing the suit the Claimant had not filed any application for letters of administration … it is the Defendant's contention in my own words that even if she were to obtain Letters of Administration this will not operate retroactively to validate the proceedings as it would had the deceased died testate.

[20] It is noted that the case of **Ingal –v- Moran**[6] has been applied by our courts in St Vincent in the case of **George Leopold Crichton (Attorney on record for Patrick Crichton Intended Administrator in the estate of Lucy Crichton deceased)-v- Lena Holder**[7]**.** In that case, Thom J in view of this decision held that a claim instituted by an "intended administrator" for the possession of land could not maintain the action.

[21] In the Antigua Case of **Ms Delcine Thomas –v- Victor Wilkins**[8] **(**The lawful Attorney of Teresa Lewis, And Administrator of the estate of Mary Felicia Thomas, the Administrator and sole Beneficiary of Estate Mr Malcolm Thomas) **Blenman J** held that the Claimant who had not obtained the grant of Letters of Administration for the estate could not properly maintain her case on behalf of the estate.

[22] In the case at bar, the Claimant in my view started the proceedings improperly, it was after she commenced the proceedings she sought to apply for letters of administration which have not yet been granted to her. This is an incurable defect and in the circumstances of this case and applying the decision in **Ingal –v- Moran** as has been applied in our courts, the Claimant's case is a nullity and will have to be struck out. Having found that the claim brought by the Claimant is a nullity on the ground that the Claimant has no locus standi to bring the action and that her obtaining a grant cannot rectify her situation there is no need to proceed to consider her application.

[23] The order of this Court, therefore, is that the Claimant's case is struck out. Costs of these proceedings in the sum of $1,500.00 are granted to the Defendants in this matter.

M E Birnie Stephenson
High Court Judge

BY THE COURT

REGISTRAR

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[6] Op cit
[7] (High Court Civil Claim No 18 of 2004).
[8] ANUHCV2007/0530