EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2017/0148

[1] VICTORIA ANSELM

Claimant

and

[2] EULINE ANSELM

[3] RICHARD ANSELM

[4] MICHAEL ANSELM

Defendants

Before: The Hon. Madam Justice M E Birnie Stephenson

Appearances:

Mrs Dawn Yearwood Stewart for the Claimant
Mr David Bruney for the Defendants

2017: August 8

2018: April 18

RULING

[1] Stephenson J.: Octave Anselm late of Point Carib in the Parish of St Patrick died on the 14th day of June 1919 Testate.

[2] The application before the Court is made by his granddaughter, the Claimant in this matter, for the contents of the Will of Octave Anselm deceased to be interpreted to determine who are the beneficiaries and or persons entitled to inherit under the said will.

[3] This application which was filed on the 17th July 2017 was accompanied by an affidavit in support setting forth the facts which the Claimant seeks to rely on. The Defendants have filed an affidavit in response. Submissions were also filed by both sides and taken into consideration by the Court.

[4] It is agreed by both sides that Octave Anselm clearly indicated that he was the owner of certain portions of land with all buildings and erections thereon, located in the Parish of St Patrick, South of the "said" island identified in his will as follows:

a. 6 Acres at Point Carib;
b. 57 Acres at "Why Why"; and
c. 50 Acres part of Petit Savanne.

[5] The Claimant contends that Octave Anselm stated in his will the criteria of the persons who were to inherit his property after the death of his wife and how they were to share the said property.

[6] For purposes of this decision it is useful to quote the provisions of the will as follows:

> *"After the death of my aforementioned wife the three portions of land together with all buildings and erections thereon shall be and revert unto my eight lawful children by her (and any future child or children which may hereafter be born out of her body by me) save five acres of land that portion forming part of the said Petit Savanne Estate, be apportioned to her, which I give and bequeath unto my natural daughter named Roselia by Betsy, to be herein after more particularly mentioned) respectively named Octavia; Neal; Norbert; Roasaline; Lucy; Beltina; George and Omega, and their respective heirs and assigns share and share alike as tenants in Common and not as joint tenants. But in the event of one or more of my aforementioned lawful children dying before marriage, and without lawful issue, or before attaining twenty one years of age, then in that event, his, her or their share or shares to be and remain for the use of*

the survivors of him, her or them so dying, to be divided. And it is my particular desire that my said children, or any of them, shall not dispose of his, her or their share of the said portions of land to any stranger- but the same to remain for the use and benefit of their respective issues.

With regard to the five acres of land part of the Petit Savanne estate herein devised unto my natural daughter named Rosalia by Betsy, I direct that in the event of her dying unmarried and without lawful issue the said portion of land to revert unto my lawful children aforenamed by my wife Julienne to be equally divided"[1]

[7] The Claimant averred that she has been advised by her Attorney At Law, Mrs Dawn Yearwood-Stewart, and verily believes that the Testator's intention as set out in his will was that "If any of his children were unmarried or had no children then they would not be entitled to inherit his lands at Point Carib[2]".

[8] The Claimant further contended that she is the daughter of Omega Anselm who was married to her mother Christine Anselm nee Fontaine and as a descendant of Omega Anselm she is entitled to lands at Point Carib.

[9] The Claimant further averred that the named defendants Euline Anselm, Richard Anselm and Michael Anselm are the children of Gustave Anselm who was the son of Neal Anselm, who was the lawful son of Octave Anselm. Miss Anselm averred that Neal Anselm was unmarried and in the circumstances of this case, therefore, she has been advised by her Attorney At Law and verily believes that the descendants of Neal Anselm are not entitled to inherit the lands at Point Carib which form part of the Estate of Octave Anselm Deceased.

[10] Learned Counsel Mrs Yearwood Stewart urged upon this in her Court, in her submissions what is her interpretation of the Will of Octave Anselm which was "if

[1] Taken from the Typed version of the Last Will and Testament of Octave Anselm duly certified by the Acting Registrar of the High Court.
[2] Paragraph 7 of the Affidavit sworn to by the Claimant and dated and filed on the 17th July 2017

any of his children die before getting married or did not have children or died before attaining the age of 21, then their share will be divided amongst the remaining survivors who are entitled."[3]

[11] Ms Yearwood Stewart further submitted that if the Court accepts her interpretation of the will then all 8 children of the deceased will not be entitled to inherit from the Estate, on the grounds that some of the children had no children and some were never married.

[12] Counsel then went on to identify which of the children of Octavia Anselm who she submitted were married and who are the persons entitled to his estate. However I have scrutinized the documents on the file in the case at bar filed prior to the 21st July 2017 and I have found no evidence has been adduced supporting these submissions as to who was or who was not married. Further, the Claimant has not provided this Court with any evidence more than her word that she is the lawful issue of Omega Anselm.

[13] Swithine Anthony Anselm swore to an affidavit on the 24th July 2017 on behalf of the Defendants and in his affidavit he exhibited the baptismal certificate of Victoria Anselm and marriage certificate of her parents, and drew to the attention of the Court that their marriage post dated her birth.

[14] Submissions under the hand of Mr David Bruney on behalf of the Defendants were filed on the 26th July 2017.

[15] Learned Counsel Mr David Bruney submitted that the Court must look at the words used in the Will, and from that gather the intention of the Testator and it is entirely possible to do so without altering the words used by the Testator.

[16] Learned Counsel urged the Court in construing the meaning of the Testators bequest to consider the words of Mr. Justice V Kokaram in the case of Emanuel Joseph[4]when he said:

[3] Paragraph 5 of the Claimant's written submissions filed on the 21 July 2017

"*…the Court must therefore rely upon general principles of construction as a compass to navigate through the maze of words used by the Testators to ascertain the true meaning of the words used. Some of the general principles of construction on the interpretation of Wills which are useful in this case as follows:*

a. The Court must give effect to the intention of the Testator as expressed in the words used in the Will.

b. The intention is to be gleamed from the entire Will.

e. The words in general are to be taken in their ordinary grammatical sense unless a clear intention to use them in another can be construed and they together can be construed, to receive a construction which will give to every expression some effect rather than one that will render any of the expression in operative…"

[17] The Defendants' contention is that Neale Anselm is in the class of beneficiary and could not be barred from taking his inheritance under the Will of Octave Anselm.

[18] Learned Counsel submitted that in Paragraph 2 of the will the word "or" appears and that the word is to be taken in its ordinary grammatical sense, especially since there is no indication on the face of the Will of Octave Anselm that there was a clear intention by the Testator that it use should be construed in another sense. It was submitted also that the Claimant has failed to take proper cognizance of the said word "or".

[19] Learned Counsel relied on the further dicta in the Emanuel Joseph Case when the learned Judge said:

"The words in general are to be taken in their ordinary grammatical sense unless a clear intention to use them in another can be construed and they

[4] Claim No. CV2009- 01852 (Trinidad & Tobago)

together can be construed, to receive a construction which will give to every expression some effect rather than one that will render any of the expression in operative…"[5]

[20] Mr David Bruney further urged the Court to consider the meaning given to the word "or" in the Shorter Oxford Dictionary[6] and the clear definition of the word alternative[7].

[21] Learned Counsel Mr Bruney on behalf of the Defendant submitted that the phrase of the will which this Court has been called on to interpret should not be read conjunctively, as the Court would do when considering Part 13(1) of the CPR Rules. This is because of the word "or" that appears in the wording of the will as against the word "and" as appears in Part 13(1). I do agree with him in that regard.

[22] Learned Counsel them submitted his interpretation of the phrase in the following way "an intended beneficiary could be married at age eighteen (18) and have lawful issue by the age nineteen (19) and die at the age of twenty (20) and this would be an effective bar to the reversion of his share as a consequence of marriage and the production of lawful issue which would stand as an isolated condition in relation to the condition that the age twenty-one (21) should be attained."[8]

[23] Learned Counsel further contended that "*the reversion of a beneficiary share in the estate is barred upon the event of the beneficiary acquiring the age of twenty-one (21) whether or not he is married and with lawful issue[9]"* and further " the acquisition of the age twenty-one (21) endows the relevant beneficiary in this

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[5] Ibid at page 5 at paragraph 12.e

[6] "A particle co-coordinating two (or more) words, phrases, or clauses, between which there is an alternative."

[7] "Stating or offering either of two things…of two things: such that one or the other may be chosen, the choice of either involving the rejection of the other."

[8] Paragraph 15 of submissions filed on behalf of the Defendants on the 26th July 2017.

[9] Paragraph 19 ibid

case being Neale Anselm deceased with the rite of passage to inherit his shares in the estate indefinitely in the sense that, no reversion of any of the eight listed beneficiaries share in the estate would occur once he or she had acquired the age of twenty-one (21)"[10].

[24] In summarizing his client's case Mr David Bruney posited "in the case of Neale Anselm, reversion would become an issue for the administrators in the case of death before the age twenty-one (21). At such a juncture, the administrators would be required to examine whether death occurred before age twenty-one (21) and, whether marriage and the birth of lawful issue had occurred prior to such said death. At such a juncture, the existence of a husband or wife and lawful issue would oust the reversion.[11]" Further "In the case at bar, since none of the beneficiaries died before the age twenty-one (21), reversion is really not a live issue[12]".

Courts Consideration

[25] The main issue in the case at bar is to decide who are the persons entitled to benefit under the will of Mr Octave Anselm.

[26] The phrase under consideration by the Court is "*... but in the event of one or more of my aforementioned lawful children dying before marriage,and without lawful issue or before attaining the age of twenty-one then in that even his, her or their share or shares to be and remain for the use of the survivors are to be divided in equal shares."...*

[27] The aim of interpreting any phrase, gift, clause or disposition in a will is to identify the intention of the testator by interpreting the words stated in their documentary, accurate context. As said in *Kirin-Amgen Inc v Hoechst Marion Roussel*

[10] Paragraph 20 ibid
[11] Paragraph 22 ibid
[12] Paragraph 23 ibid

Ltd [13], Lord Hoffmann said: "No one has ever made an a contextual statement. There is always some context to any utterance, however meager." The Court is not to construe the words in a vacuum[14]

[28] Following the approach the Court in the Marley –v- Rawlings[15], when interpreting the provisions of a will, the Court should be concerned to ascertain the intention of the testator, and this is done by looking at and identify the meaning of the relevant words, taking into consideration in the light of the natural and ordinary meaning of those words, the overall purpose of the document, any other provisions of the document, the facts known or assumed by the parties at the time that the document was executed, and common sense, but ignoring subjective evidence of any party's intentions.

[29] In the case at bar, the gift to the Testator's children based on the words in his will creates a class gift. "*unto my eight lawful children by her (and any future child or children which may hereafter be born out of her body by me)… respectively named Octavia; Neal; Norbert; Roasaline; Lucy; Beltina; George and Omega, and their respective heirs and assigns*" is a class gift, that is, class of persons included and comprehended under some general description and bearing a certain relation to the Testator"[16]

[30] Further, the gift to the class of beneficiaries was, based on the words used in the will, predicated on one of two contingencies which are not to be construed cumulatively, but disjunctively due to the presence of the word "or". Therefore the disjunctive contingency can be stated thus:

> *"… But in the event of one or more of my aforementioned lawful children dying before marriage, and without lawful issue, or before attaining twenty one years of age, then in that event, his, her or their*

[13] [2004] UKHL 46, [2005] 1 All ER 667, para 64, [2005] RPC 169
[14] Sir Thomas Bingham MR said in *Arbuthnott v Fagan* [1995] CLC 1396,
[15] [2014] UKSC 2, [2014] 1 All E R 80, [2014] 2 WLR 213 per Lord Neuberger
[16] Halsbury's Laws of England Volume 102 (2016)at paragraph 175

share or shares to be and remain for the use of the survivors of him, her or them so dying,… ".

[31] According to Halsbury's Laws of England "Where there is a gift to a class on a contingent event, the time of happening of the contingency is not imported into the description of the individuals composing the class"[17] In the case of *Hickling v. Fair*[18], the principle of construction was stated to be:

> "It is an elementary principle in the construction of wills that a gift to a class after a life interest or a life-rent includes all persons within the description of the class who were alive at the testator's death, or have come into being during the lifetime of the life tenant or life-renter. That principle is common to Scotland and England, and is applicable, I should suppose, wherever the English language is used. I think it is equally clear that when the gift is made to depend on the happening of a contingency, that contingency is not imported by implication into the description of the class so as to confine the gift to those members of the class who survive the contingency."

[32] *In the case of Sutcliffe, Alison v Alison*[19]. It was held that the contingency that there are to be issue living at the time of distribution is not imported into the description of the issue who are to take, so as to exclude issue who have died before the date of distribution:

[33] In the case of *Ling v Ling*[20] the Testator made a will providing for his wife and his two children; R and V. Under clause 3 of the will, the Testator's estate was to be left to his wife absolutely if she survived more than a month after his death. Under clause 4 of the will, the Testator provided that if his wife pre-deceased him then his estate would go to all, or any, of his children living at his death, who had

[17] Ibid at paragraph 303
[18] [1899] AC 15 at 35, HL, per Lord Davey
[19] [1934] Ch 219
[20] [2001] All ER (D) 322 (Nov)

attained the age of 21.On 23 April 1989, the Testator's son R died, leaving his wife and his son A who was born in February 1984. On 2 November 1998 the Testator's wife died before him, and on 7 February 1999 the Testator died.

[34] Upon the Testator's death his daughter V applied to the Court for a declaration that she was solely entitled to her father's estate. She submitted firstly, that clause 4 of the will was a class gift only to those of the Testator's children living at his death, and as her brother predeceased his father neither he, nor A her brother's child , were members of the class entitled to benefit under the Testator's will. She also contended that a contrary intention appeared in clause 4 of her father's will. The Court disagreed with her and held that no contrary intention and A fell within the class of beneficiaries.

[35] I take into consideration the words used by the Testator to express his intentions. I have also considered the meaning of the words in relation to the persons described.

[36] I must construe the will according to what I understand the actual meaning of the words used and in the circumstances of this case, and applying the rule that when a gift is made to depend on the happening of a contingency that contingency is not to be imported into the description of the class so as to confine the gift to those members of the class who survived the contingency. I find that there is no other clear indication applicable appearing elsewhere in the will.

[37] Accordingly I declare that the true construction of the clauses of the will is that their effect taken together is that the class of persons, who were entitled to inherit, would be the testator's lawful children who attained the age of twenty one years.

[38] In the event that any of the testator's children died before they were married and without lawful issue they would have failed to meet the contingency stated in the will and would not inherit.

[39] Well many years have passed since the death of the Testator and based on the evidence adduced thus far in this matter, it would appear that the lands belonging to the testators are not occupied by his grand children, great grand children and great great grand children. In the circumstances of the case this Court is mindful to order that evidence be produced by both parties as to who are the current occupants of the land, and identify which parts of the land are occupied. This would to my mind start the proceedings of ascertaining who is entitled, who is on the land and settle the entire estate.

[40] As a short post script to this ruling, due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, this Court apologises for the delay in delivering this ruling and for any errors which may appear herein.

M E Birnie Stephenson
High Court Judge

[SEAL] By the Court

Registrar