SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2004/0783

BETWEEN:

CORA URELINE SMITH qua Tutrix of the minor KARRA HANNA SMITH acting herein and represented by her duly appointed Attorney Alexandra Marcelin

Claimant

And

MARTHA ADOLTA HENRY born Louis also Called MARTHA ADOLTA LOUISY qua Administratrix of the estate of the late Gregory Louisy

Defendant

Appearances:

Mr. Peter Foster in association with Ms. Claire Green Malaykhan for the Claimant
Mrs. Lydia Faisal in association with Mr. Stanley Felix for the Defendant

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2006: February, 27
November, 29

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# JUDGMENT

Mason J

[1] Let me begin by proffering sincere apologies for the tardiness in rendering this decision. I was operating under the misapprehension that Counsel were supposed to file written submission when in fact, oral submissions had been made since 27th February 2006 – some nine (9) months ago.

[2] It is said that on the 20th March 1977, the Claimant bore a female child to the Defendant's son who died on 14th July 2002. The Defendant applied for and was granted Letters of Administration to the estate and as a consequence obtained title to her son's properties.

[3] On 20th October 2004 the Claimant instituted action on behalf of her minor daughter asking for revocation of the grant of Letters of Administration to the Defendant, rectification of the Land Register and for a grant of Letters of Administration to her on behalf of her daughter.

[4] The Defendant on 10th December 2004 filed a Defence in which, inter dia, she denied that the minor child was heir - at – law of her deceased son and put the Claimant to proof of paternity. The Claimant filed her reply on 18th January 2005.

[5] On 10th February 2005 when the Fixed Date Claim for revocation of the Letters of Administration came on for hearing, the Court made the following order:

(1) That the Letter of Administration No. L. A. 187 of 2002 granted on the 14th November 2002 to Martha Adolta Henry born LOUIS also called MARTHA ADOLTA LOUISY to administer the estate of the late GREGORY LOUISY, which was registered at the Office of Deeds and Mortgaged on the 6th

December 2002 in Vol. 155A No. 186564 and at the Land Registry on the 5th June 2003 as Instrument No. LA80/2003 is hereby revoked.

(2) The Land Register for Parcel No. 0841B 132 is to be rectified by deleting the name of MARTHA ADOLTA HENRY in the Proprietorship Section.

(3) Pursuant to Article 579 (i) of the Civil Code (Amendment) Act No. 4 of 1988 as amended by Section 3 (i) of the Civil Code (Amendment) No. 3 Act No. 12 of 1991 and Article 579 as amended by Section 3 (ii) of the Civil Code (Amendment) No. 3 Act No. 12 of 1991, the Claimant CORA URELINE SMITH qua Tutrix of the minor KARA HANNA SMITH is appointed as Administratrix of the Estate of the deceased GREGORY LOUISY.

(4) The Defendant to file and serve by Thursday the 31st day of March 2005 a Statement regarding her administration of the estate from the date of death of GREGORY LOUISY to the date of revocation along with any claim she has to compensation against the Estate.

(5) That this matter is adjourned to Thursday the 5th day of May 2005 for further directions:

(6) The costs for this claim to be borne by the Estate.

[6] Consequent upon paragraph 4 of this Order, the Defendant filed her Statement of Claim to which there was a Defence and Counterclaim by the Claimant and a subsequent Reply and Defence to Counterclaim by the Defendant.

[7] Matters progressed and Case Management Order, Witness Statements and Pre Trial Memoranda were duly filed.

[8] In September 2005 an application was made by the Defendants for specific disclosure of certain documents including "The Acte de Reconnaissance" (Acknowledgement of Paternity) made on behalf of the minor child or any other document showing the relationship between the child and the Claimant's husband".

[9] On 19th October 2005 the Court made an Order for specific disclosure and on 24th November 2005 documents were filed by the Claimant, which did not include this "Acte de Reconnaissance".

[10] In January 2006 both parties filed Notices of Application.

[11] The Claimant under Part 26 Civil Procedure Rules 2000 and under the inherent jurisdiction of the Court applied for an order:

1. Striking out all aversions to a dispute regarding the paternity of the minor KARRA HANNA SMITH contained in the following documents files by the Defendant/Respondent:

    (1) REPLY AND DEFENCE TO COUNTERCLAIM filed on 31st May 2005 at paragraph 14;
    (2) DEFENDANT'S PRE-TRIAL MEMORANDUM filed on 27th September 2005 at paragraphs 1, 2(a), 3(a), 3(d);
    (3) DEFENDANT'S WITNESS STATEMENT filed on 26th July 2005 at paragraph 19;

(4) DEFENDANT'S ADDITIONAL WITNESS STATEMENT filed on 6th October 2005 at paragraphs 1, 3, 4, 5;

2 That the issues to be determined at the Trial be limited to the Defendant's administration of the estate from the date of death of GREGORY LOUISY to the date or revocation of her grant of letters of Administration and her claim for compensation.

3. That the Defendant bears the costs of and occasioned by this application.

[12] The following grounds were supplied to support the Claimant's application:

(a) the issue of paternity was determined by Justice Ola Mae Edwards at the hearing on 10th February 2005 and judgment entered for the Claimant in respect of the same paternity issue as that alleged in the Defendant's statements of case and witness statements herein; and the said Order still remains in full force. It is therefore an abuse of the process of the Court for the Defendant to seek to re-litigate the issue of paternity.

(b) the Claimant's cause of action was that the minor was the sole heir at law of the Deceased, being his only child and that the Defendant wrongfully applied for Letter of Administration for the estate of the Deceased by claiming to be the sole heir at law.

(c) The Defendant in her Defence filed on 10th December 2004 made no admission that the Deceased dies and left the minor as his sole heir at law, put the minor represented by her Tutrix to strict proof of paternity and stated that the Defendant was entitled to Letters of Administration. The Defendant

further stated that the minor was not the sole beneficiary of the Deceased and did not fall within the requirements of the Civil.

(d) At the hearing on 10th February 2005, the parties argued the issue of paternity before the Court

(e) The Court by revoking the Letters of Administration obtained by the Defendant and by appointing the minor represented by her Tutrix as Administratratrix of the estate of the Deceased pursuant to article 579 (1) of the Civil Code (Amendment) Act No. 4 of 1988 as amended by section 3 (1) of the Civil Code (Amendment) (No.3) Act No. 12 of 1991 and article 579 as amended by section 3 (ii) of the Civil Code (Amendment) (No.3) Act No. 12 of 1991 determined the issue of paternity, the Claimant having satisfied these statutory provisions and proved to the Court that the minor is the child of the Deceased.

(f) It was not necessary for the Court to expressly declare the minor the child of the Deceased as this was the effect of the Order of Justice Ola Mae Edwards.

(g) The Defendant failed to appeal the Order of Justice Ola Mae Edwards made on 10th February 2005, and the Defendant is estopped and precluded from disputing the paternity of the minor before this Court.

(h) The Order of 10th February 2005 is conclusive between the parties as to all matters adjudicated upon and this Order is a defence by way of estoppel to any subsequent action in the High Court in which the same matter, that is the paternity of the minor is brought into question.

(i) The parties presently before the Court are the Claimant as Administratrix of the estate of the Deceased and the Defendant in her personal capacity. The only issues before the Court are the Defendant's administration of the estate

from the date of death of the Deceased to the date of revocation of her grant of Letters of Administration and her claim for compensation.

(j) Should the Court make a determination on paternity, the Court will be setting aside the Order of Justice Ola Mae Edwards made on 10th February 2005, which it does not have jurisdiction to do.

[13] For her part, the Defendant made an application for the following:

(1) That the Letters of Administration No. L. A. 187 of 2002 granted on the 14th November 2002 to Martha Adolta Henry born LOUIS also called MARTHA ADOLTA LOUISY to administer the estate of the late GREGORY LOUISY, which was registered at the Office of Deeds and Mortgaged on the 6th December 2002 in Vol. 155A No. 186564 and at the Land Registry on the 5th June 2003 as Instrument No. LA80/2003 is hereby revoked.

(2) The Land Register for Parcel No. 0841B 132 is to be rectified by deleting the name of MARTHA ADOLTA HENRY in the Proprietorship Section.

(3) Pursuant to Article 579 (i) of the Civil Code (Amendment) Act No. 4 of 1988 as amended by Section 3 (i) of the Civil Code (Amendment) No. 3 Act No. 12 of 1991 and Article 579 as amended by Section 3 (ii) of the Civil Code (Amendment) No. 3 Act No. 12 of 1991, the Claimant CORA URELINE SMITH qua Tutrix of the minor KARA HANNA

SMITH is appointed as Administratrix of the Estate of the deceased GREGORY LOUISY.

(4) The Defendant to file and serve by Thursday the 31st day of March 2005 a statement regarding her administration of the estate from the date of death of GREGORY LOUISY to the date of revocation along with any claim she has to compensation against the Estate.

(5) That this matter is adjourned to Thursday the 5th day of May, 2005 for further directions.

(6) That costs for this claim to be borne by the Estate (sic)

[14] The issue for determination is whether the matter is res judicata.

[15] Counsel for the Claimant is contending that the issue of paternity was dealt with by the Court when the matter came on for hearing on 10th February 2005 and it would be an abuse of the process of the Court to have the issue re-litigated. Also not having appealed the Order, the Defendant is estopped and precluded from disputing the paternity issue.

[16] Counsel for the Defendant's view is diametrically opposed: it is that while the question of paternity was in issue, it was never admitted in the pleadings nor was it argued or determined by the Court and because no declaration as to paternity was made by the Court, it is an issue still to be resolved at trial.

[17] I am not prepared ti state that the Court made a categorical order as to paternity but what can be said is that whether or not this issue was argued at the hearing, it is apparent that

on the face of the order of 10th February 2005, the Court was satisfied by the evidence before it that the Defendant should be replaced by the Claimant as administratrix of the deceased's estate.

[18] If however this was the only issue before the court I would state unequivocally that the matter is res judicata, for in the words of Romer J in the case of Shoe Machinery Company v Cutlan (1896) Ch 667 at 671 which was cited by Counsel for the Claimant:

> *"It was not necessary in my opinion, therefore that there should be – though I agree that it might have been better if there had been – in the judgment in the case a separate declaration stating the validity of the patent: a declaration which clearly the Court had jurisdiction to put into the judgment if it had thought fit ……the issue of validity sufficiently appears from the form of the judgment itself".*

[19] But that having been said, a judgment is conclusive only as to the point decided and not as to matters which were neither put in issue nor admitted on the pleadings. In order to ascertain what was in issue between the parties in the earlier proceedings the judgment itself must be looked at, and where there have been pleadings, these should also be determined, being in fact part of the record. Whatever goes to make up the record must be looked at: Halsbury's Laws 4th edition Volume 16 paras 1556, 1558.

[20] The classic statement on the subject of res judicata is contained in the judgment of Wigram VC in Henderson v Henderson (1843) Hare 100 at page 115:

*"...where a given matter becomes the subject of litigation, in and of adjudication by, a court of competent jurisdiction, the court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the subject of litigation in respect of a matter which might have been brought forward as part of the subject in context, but which was not brought forward, only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time".*

[21] And Lord Kilbrandon after quoting Henderson (supra) said in Yat Tung Co v Dao Heng Bank (1975) AC 581:

*The shutting out of a "subject of litigation" – a power which no court should exercise but after a scrupulous examination of all the circumstances – is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover although negligence, inadvertence or even accident will not suffice to excuse, nevertheless "special circumstances" are reserved in case justice should be found to require the non-application of the rule".*

[22] It is clear from these authorities that where an applicant seeks to litigate the same issue a second time relying on fresh propositions he can only do so if he can demonstrate that special circumstances exist for displacing the normal rules. It is against this background that the submission in the present case must be examined i.e. to determine whether this is a case of res judicata or whether special circumstances exist for not giving effect to the plea of res judicata.

[23] I now iterate what has been revealed by the evidence adduced and produced in the case:

[24] On 6th December 2001 Roland Jean – Louis made a declaration (Acte de Reconnaissance) in Martinique acknowledging as his daughter the minor daughter of the Claimant which the Claimant states is the biological child of Gregory Louis, the now deceased son of the Defendant.

[25] In her witness statement, the Claimant avers:

> *"Karra is the biological daughter of the late Gregory Louis, also called Gregory Louisy. Karra resides in Martinique with me and my husband but she is not registered in Martinique or anywhere else as the biological child of my husband".*

[26] The Claimant married the said Jean Louis in Martinique on 4th July 2002 during the lifetime of the said Gregory Louis who subsequently died on 14th July, 2002.

[27] It is the evidence of the Defendant given in the Affidavit to her application that:

> *"The information regarding the paternity of the child was given to me by my son, Gregory Louis sometime in 2001,whilst he was still alive ……"*
>
> *"That based on the information my lawyer had made an oral application to the court for an order to have the relevant documents produced in court, but Justice Shanks had indicated that this court had no jurisdiction to order the disclosure of documents from any authority in Martinique".*
>
> *"Consequently nothing happened in that regard until my Lawyer made an application for the specific disclosure 'of additional documents from the Claimant, including the Acknowledgement of Paternity.*
>
> *Rather than disclosing the document, the Claimant asserted through her lawyer that she had no knowledge of any such document…"*

[28] This court is not prepared to make any determination with regard to the issue of the paternity of the minor child taking into account that what is crucial and quite possibly fundamental to the resolution of this matter are the significance and implications surrounding the meaning of an acknowledgement of paternity in the French jurisdiction, that is, whether in acknowledging the child as his, the husband of the Claimant now assumes the mantle of parenthood together with the rights, obligations and privileges that

would entail and thereby displacing the biological parent as would be the case of adoption in our jurisdiction.

[29] Suffice it to say that when the order for revocation of the Letters of Administration was sought and subsequently made, it was within the peculiar knowledge of the Claimant that the fact that her husband having acknowledged the paternity of her minor child could possibly put a different perspective on the matter, neglected to make the Court privy to such pertinent information from which a categorical determination could have been made.

[30] Following upon the principles adumbrated in the Henderson case (supra) and those following it, it cannot be said that the Defendant through negligence, inadvertence or accident did not bring forward matters material to the case because as has been given in evidence, the Defendant tried to procure the relevant document. The first application was denied by the court for lack of jurisdiction and when the appropriate application for specific disclosure was made, the existence of the "Acts de Reconnaissance" was both implicitly and explicitly denied.

[31] It is my considered opinion that the Claimant in willfully withholding the relevant information deliberately misled the court but sought cleverly to obfuscate the matter by stating that the minor "is not registered anywhere as the biological child of her husband". The Claimant is thus guilty of fraudulent misrepresentation and cannot be allowed to take advantage of her wrong.

[32] Counsel for the Claimant argues that this court would be exercising the jurisdiction of an appeal court if it were to set aside the order of 10th February 2005 but it is an established principle of law that fraud vitiates any proceedings and a judgment obtained by fraud is a nullity.

[33] In the Duchess of Kingston Case (1776) 2 SM LC 784 it was stated:

> *"Where a judgment has been obtained by the fraud of a party to a suit, he cannot prevent the question of fraud from being litigated, when he seeks to enforce the judgment so obtained. The justice of that proposition is obvious: if it were not so, we should have to disregard a well established rule of law that no man shall take advantage of his own wrong".*

[34] See also Lindley J in Vandale v Lawes (1890) 25 QB 310:

> *"If the fraud .....consists on the fact that the Plaintiff has induced (that) court by fraud to come to a wrong conclusion, you can reopen the whole case even although you will have in this court to go into the very facts which were investigated and which were in issue in the other court".*

[35] Thus a judgment of that court i.e the order of 10th February 2005 is impeachable in this court on the ground that the first judgment was obtained by fraud but only by the production and establishment of evidence newly discovered since the trial and not reasonably discoverable before the trial: Boswell v Coakes (No.2) (1894) 86 LT 365.

[36] Before concluding I would wish to comment on the question of the overriding objective contained as we know in Part 1 of the Civil Procedure Rules 2000. By Part 1.1 and (2) (1) it is provided:

"The overriding objective of these rules is to enable the court to deal with cases justly".

Dealing justly with the case includes –

(a) ensuring, so far as is practicable, that the parties are on an equal footing".

[37] "On an equal footing" in my humble opinion, would include disclosure of all documents so that the court could do justice to the issue before it.

[38] It is my opinion that in light of the foregoing and there being special circumstances the issue as to paternity of the minor child cannot be considered as res judicata and must continue to be considered as part of the substantive action.

ORDER

**Application by the Claimant is hereby dismissed**

That Order of 10th February 2005 be set aside.

No order as to costs

SANDRA MASON QC

High Court Judge