

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2016/0288

BETWEEN:

PATRICIA PEETS

Claimant

And

EARL GARFIELD JEFFERS

Defendant

Appearances:-

Ms. Marsha Henderson for the Claimant.

Mr. Terence Byron with Mr. Nassibou Butler and Ms. Indira Butler for the Defendant.

2017: July 5th

JUDGMENT

- [1] **WARD, J.:** On 29th May, 2013, the defendant obtained a Grant of Letters of Administration of the estate of Winston Adolphus Liddie as lawful Attorney for Miguel Shane Xavier Liddie, son and next of kin of the deceased.
- [2] The claimant contends that upon the death of the deceased intestate on 10th January 2013, he was survived by his spouse Yvette Patricia Bryan a.k.a. Yvette Patricia Coolier Liddie of the U.S.A. The said spouse has waived her interest and/or entitlement to apply for and/or benefit in the estate of the deceased and has consented to Shirley Liddie, Edwin Liddie and Leonard Liddie, the lawful sister and brothers of the deceased, respectively, to apply for Letters of Administration of

the estate. They in turn have granted a Power of Attorney to the claimant to make the application.

- [3] Further, the claimant alleges that the defendant did not comply with the requirements of sections 5 and 6 of the **Status of Children Act** CAP 12.14 and section 15 of the **Registration of Births, Deaths and Marriages Act** CAP 12.13 when he caused the name of the deceased to be recorded on the birth certificate as the lawful father of Miguel because the deceased never signed any document acknowledging that he was the father of Miguel nor had he acknowledged paternity of Miguel during his life time. The claimant thus asserts that the deceased died leaving no issue or parent who was entitled to share in the estate.
- [4] Accordingly, by fixed date claim form, the claimant claims against the defendant for an order revoking the grant of registration by the Registrar of Births of Winston Adolphus Liddie as the lawful father of Miguel Shane Xavier Liddie and a further order that the Grant of Letters of Administration granted to the defendant be revoked.
- [5] On 2nd December, 2016 the defendant filed an application for an Order to strike out the Fixed Date Claim Form on the basis that it is non-compliant with Rule 68.2(2) in that the claim form fails to state the nature of the interest of the claimant in the estate of the deceased.
- [6] The defendant also takes a point in limine that a person suing under a Power of Attorney on behalf of his principal sues in the name of the principal only and, accordingly the title to the action incorrectly describes the claimant.
- [7] On 20th January, 2017, the defendant filed an application for an Order to add the purported spouse of the deceased as a defendant in these proceedings pursuant to CPR 19.3(2)(a).
- [8] The defendant submits that there is an issue involving the purported surviving spouse which is connected to the matters in dispute and that her addition is necessary for its resolution. In short the issues are whether Yvette Patricia Collier Liddie was the lawful wife of the deceased; if she were, whether she waived her

interest in the estate and consented to the lawful sister and brothers named in the claim being granted Letters of Administration.

[9] In support of the application to add, the defendant has filed an affidavit in which he avers that the purported marriage of the purported spouse to the deceased was a bigamous marriage and therefore null and void *ab initio*; that the purported "CONSENT" signed by the purported spouse is a forgery since she has not been in the Federation for more than 20 years and could not have sworn any document at the Registrar's Office in Basseterre on 15th February, 2016.

[10] In short, the defendant asserts that the claimant lacks *locus standi* to bring this action.

[11] The issues that fall for resolution upon this application are as follows:

- (i) **Whether the claimant has locus standi to bring the claim;**
- (ii) **Whether the purported spouse should be added as a defendant;**
- (iii) **Whether there has been a proper renunciation.**

[12] The court will first determine the issue relating to whether the claim is properly brought by the claimant who holds a Power of Attorney.

[13] Counsel for the defendant in written and oral submissions relies on the authority of **Jones and Saldanha v. Gurney**¹ as authority for the proposition that a person suing under a Power of Attorney on behalf of his principal sues in the name of the principal only. It is said that the title to the claim mis-describes a party because the claimant has brought the action in her own name.

[14] Secondly, the applicant submits that the claimant has not complied with CPR 68.8 (2) in that she has not stated the nature of her interest in the estate of the deceased.

[15] In response, counsel for the claimant submits that there has been compliance with CPR 68.2 in that the statement of claim sets out that the claimant is acting by

¹ (1913) W.N. 72

virtue of a Power of Attorney, the donors of whom are the lawful sister and brothers of the whole blood of the deceased and such the claim is properly before the court.

Discussion

In **Jones & Saldanha v Gurney** the plaintiff, Jones, entered into a contract with the defendant to maintain and educate his daughter for £150, a year. Being dissatisfied with the way his daughter had been maintained and educated, he ordered the defendant to give up the daughter to the plaintiff, Saldanha, and gave him a power of attorney to take proceedings against the defendant for an account. The proceedings were taken in the names of Jones and Saldanha as joint plaintiffs.

- [16] The defendant brought a motion to strike out the name of Saldanha as improperly joined. The plaintiff submitted that Saldanha was properly joined as plaintiff because he held a power of attorney and could give receipts.
- [17] It was held that, that afforded no ground for making him a party and that proceedings taken by an attorney ought to be taken in the name of his principal. Accordingly, the court held that the statement of claim showed no cause of action at all in Saldanha and that his name was improperly joined.
- [18] The court concurs with the submissions of learned counsel for the applicant/defendant that the claim must be brought in the name of the donors of the power.
- [19] It follows from this that the applicant's submission that the provisions of Rule 68.2 have not and cannot be complied with are well founded.
- [20] The question remains: should this result in the claim being struck out for failure to comply with a rule?
- [21] Counsel for the applicant has candidly made it plain that he does not submit that this mis-description cannot be cured by way of substitution by the court either of its own motion or on application pursuant to CPR 19.3(1).

[22] Striking out a claim can be a draconian measure. I remind myself that the jurisdiction to strike out a case should be exercised sparingly since it deprives a party of its right to a fair trial. The discretion to strike out is thus to be exercised with care and circumspection and in accordance with the overriding objective of dealing with cases justly.

[23] Given the issues to be resolved, it would be wrong to deprive the prospective claimants of the opportunity to have the matters ventilated at trial owing to this defect.

[24] In the court's view, the interests of justice can be met by substituting the names of the donors of the power for the claimant's.

[25] Accordingly, the application to strike out the Fixed Date Claim is denied.

Whether the purported spouse should be added as a defendant.

[26] It is convenient to deal with this issue at this stage as it seems to me that the remaining issue hinges upon its resolution.

[27] The applicant/defendant invokes the court's jurisdiction to add a party pursuant to Rules 19.3 (2)(a) which permits an existing party to make an application to add a party and Rule 19.3(6) which enjoins a court that grants permission to add a party to consider giving consequential directions to the parties.

[28] In support of the application, the defendant filed an affidavit in which he averred that Yvette Patricia Collier Liddie was not the lawful wife of the deceased; that if she were, she did not waive her interest in the estate and did not consent to the lawful sister and brothers named in the claim being granted Letters of Administration; that the purported marriage of the purported spouse to the deceased was a bigamous marriage and therefore null and void *ab initio*; that the purported "CONSENT" signed by the purported spouse is a forgery since she has not been in the Federation for more than 20 years and could not have sworn any document at the Registrar's Office in Basseterre on 15th February, 2016.

[29] The essential question for the court is whether it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or whether there is an issue involving the spouse which is connected to the matters in dispute and it is desirable to add the spouse so that the court can resolve that issue.

[30] In resolving this question the court must have regard to the nature of the pleaded case, the evidence in support of the application and the overriding objective of the CPR.

[31] In this case, the very resolution of the question regarding the claimant's entitlement to bring the claim is dependent upon whether there is indeed a lawful surviving spouse who has properly renounced her entitlement to bring the claim.

[32] In the Court's view, these issues may not properly be resolved without the addition of the spouse as a defendant having particular regard to the matters averred in the defendant's affidavit as they relate to the status of her marriage to the deceased and the purported "CONSENT" document executed by her.

[33] Leave is therefore granted to add Yvette Patricia Collier Liddie as a defendant.

(iii) Whether there has been a proper and effective renunciation by the purported spouse of the deceased.

[34] It follows from what I have said above that this issue is best left for resolution after the purported spouse is joined in the proceedings given the factual issues that must be determined in order to resolve this issue. Accordingly, the court expresses no view on the very helpful and well researched submissions of counsel for the applicant as they relate to this issue.

ORDER

1. The application to strike out the Fixed Date Claim is dismissed.
2. Leave is granted to substitute the names of Shirley Liddie, Edwin Liddie and Leonard Liddie for the Claimant's name.
3. Leave is granted for Yvette Patricia Collier Liddie to be added as a defendant.
4. Hereafter the parties are to proceed in accordance with the Rules of Court.

Trevor M. Ward, QC

Resident Judge

By the Court

Registrar