

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2019/0553

BETWEEN:

1. EDITH CAZAUBON
2. PORTIA JOSEPH-EMMANUEL

Claimants

and

1. SHAWN ROSEMOND
in his capacity as executor of the estate of the
late Don Patrick Hedweige, the deceased
2. CECILY JAMES TOBIERRE
3. LORNA SIMON

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Horace Fraser for the Claimants

Mr. Leevie Herelle for the First Defendant

2023: May 24; (Trial)
May 26; (Claimant's Submissions)
June 7; (Claimant's Submissions)
June 12; (First Defendant's Submissions)
2026: February 5. (Decision)

JUDGMENT

- [1] **CENAC-PHULGENCE J:** By an amended claim filed 9th June 2021, the claimants Edith Cazaubon ("Ms. Cazaubon") and Portia Joseph-Emmanuel ("Ms. Joseph-Emmanuel") filed a claim against Shawn Rosemond ("Mr. Rosemond") in his capacity as executor of the last will and testament ("the Will") of the late Don Patrick Hedweige Rosemond ("the testator/the deceased"), Cecily James Tobierre ("Ms. Tobierre") and Lorna Simon ("Ms. Simon"). Ms. Tobierre and Ms. Simon have never participated in the proceedings and were only named as defendants according to the claim for

their failure or omission to indicate their willingness to be claimants in the proceedings.

- [2] On the claim, the claimants sought the following relief: (a) an order revoking the grant of probate to Mr. Rosemond SLUHPB2014/0219 dated 13th August 2014; (b) an order appointing Ms. Cazaubon to administer the estate of the late Mr. Don Patrick Hedweige Rosemond; (c) an order directing Mr. Rosemond to lodge the grant of probate within seven (7) days of the order of the Court should he fail to lodge the Probate as directed after the service of the claim form; (d) an order directing Mr. Rosemond to render to the claimants a full and proper account of his administration of the estate of the deceased; and (e) costs.
- [3] The deceased left a last will and testament dated 19th January 2011.¹ Mr. Rosemond, the executor of the Will obtained a grant of probate in SLUHPB2014/0219 dated 13th August 2014.² The claimants, the second and third defendants are all the natural children of the deceased. Mr. Rosemond is the deceased's nephew.
- [4] At the date of the filing of the claim, the claimants allege that five (5) years and eight (8) months had elapsed and Mr. Rosemond had not fully administered the estate of the deceased. Mr. Rosemond in his defence avers that the length of time since the grant of the probate is not a reflection of the dereliction of duty on his part as the executor of the estate of the deceased. He says further that the deceased in recognition of the complexity of the estate, extended his legal seizen beyond a year and a day until the termination of time as may be required to settle and wind up all matters pertaining to the estate and succession.
- [5] The claimants say that Mr. Rosemond has shown an unwillingness to provide them with information regarding the administration of the estate of the deceased. Ms. Cazaubon wrote several letters through her Counsel to Mr. Rosemond demanding that he settle the properties left to her and her children

¹ See pp14-20 of Trial Bundle (TB) 2.

² See p 5 of TB 2.

pursuant to the Will. She has exhibited these letters and Mr. Rosemond's responses.

- [6] To these allegations Mr. Rosemond says he has diligently undertaken his task as executor and in November 2018, being successful with the sale of property-Block and Parcel 0849E 59, he communicated that fact and the entitlement to the proceeds of the sale to the beneficiaries including the claimants. No evidence of this communication was provided by Mr. Rosemond.
- [7] On 1st June 2015, Ms. Cazaubon had her lawyer to prepare a Vesting Deed to prompt Mr. Rosemond to vest the property situate at Vieux Fort described as Block and Parcel 1421B 239 left to her and her children under the Will. In response to this, Mr. Rosemond says that the lawyer who had prepared the vesting deed was disbarred from practice and the vesting was not completed. According to Mr. Rosemond, this remains an outstanding issue due to the extremely litigious and acrimonious manner in which Ms. Cazaubon conducted her relationship with him and her other siblings as beneficiaries under the estate.
- [8] On 12th August 2015, Ms. Cazaubon filed claim SLUHCV2015/0634 seeking an order for the administration of the estate of the deceased and for proper accounts much like the instant claim. On 19th July 2017, the Court ordered Mr. Rosemond to provide Ms. Cazaubon with 'bank statements with respect to funds being held in accounts in the name of the deceased at the Bank of Nova Scotia.' Mr. Rosemond the claimants allege, did nothing and on 30th October 2017, Ms. Cazaubon through her lawyer wrote to Mr. Rosemond to remind him of the Court's Order. Sometime after 6th December 2017, Mr. Rosemond provided a statement. This claim was subsequently discontinued.
- [9] In response, Mr. Rosemond says as the executor he owes a fiduciary duty to the estate as a whole and all the beneficiaries collectively as opposed to Ms. Cazaubon specifically.

- [10] The claimants allege that Mr. Rosemond would have attempted to render an account of the administration of the estate of the deceased on 6th March 2017, but it lacked specifics and the figures were not supported by any bills, receipts or invoices. The claimants further allege that Mr. Rosemond has shown a clear intention to administer the estate of the deceased not in accordance with the law but by his own whim and uncontrolled fancy. Mr. Rosemond says he did comply with the Court's Order to provide an account which was done via the letter dated 6th March 2017.
- [11] Mr. Rosemond avers that the claimants have not demonstrated or provided any instance or evidence where he has reneged on his responsibility as executor of the estate of the deceased and or conducted the administration contrary to law or his fiduciary duty owed to the estate and the beneficiaries. He therefore says that the orders sought by the claimants ought not to be granted and any costs order should be deducted from Ms. Cazaubon's share entitlement of the estate.
- [12] Having reviewed this claim it was apparent that the claimants' main contention was with Mr. Rosemond's administration of the estate. Therefore, by Order dated 25th October 2021, the Court ordered that he file an account. Consequently, the claimants no longer pursue the reliefs listed at (a) to (c) of paragraph 2 above.
- [13] It is important to have regard to the terms of the Will executed on 19th January 2011 as I review the account filed by Mr. Rosemond on 22nd April 2022.³ I have also considered the affidavit in response of the claimants filed on 15th August 2022,⁴ the affidavit in response filed by the first defendant on 18th November 2022,⁵ and the submissions of the claimant filed on 26th May 2023 and 7th June 2023 and those of the first defendant filed on 12th June 2023.

Bequests in the Will

³ At p 29 of TB 1.

⁴ At p 33 of TB 1.

⁵ At p 40 of TB 1.

- [14] I will now examine the relevant bequests in the Will and the account in relation to those.

Testamentary Expenses

- [5] By Clause 3 the testator desired that all his debts, funeral and testamentary expenses be paid by the executor as soon as possible after his death. He did not say specifically where these expenses were to be paid from.

Sans Souci Property

- [6] At Clause 4 of the Will the testator wished that his property consisting of house and land situate at Sans Souci, Castries be sold and the proceeds of sale be divided among his natural children in the following proportions: (a) 50% to Edith Cazaubon, (the 1st claimant), (b) the remaining 50% to his other children, Lorna Simon, Cecily James (the defendants) and Portia Joseph-Emmanuel (the 2nd claimant) in equal shares.

- [7] As directed by the testator, the Sans Souci property was sold on 26th November 2018 for the sum of \$400,000.00. Mr. Rosemond does not say where the proceeds of the sale were deposited but indicates some items which he says the proceeds were used for. These are set out below.

(i) payment for valuation to Mr. David Emmanuel in the amount of \$650.00 which appears to have been paid out of a Bank of Saint Lucia ("BOSL") Account No. 933248713-18th June 2015;

- [8] Ms. Cazaubon suggested in her affidavit that there was no indication as to what this payment was for and also noted that the amount while said to have been paid from the BOSL account is also listed as an expense against the proceeds of sale. If it was paid from the BOSL account, it ought not to be deducted again from the sale proceeds.

(ii) payment for valuation to Giselle Casimir-Hull in the amount of \$500.00 which was paid from Bank of Nova Scotia Account (BONS) No. 1030316-21st July 2017;

[9] Like the payment to Mr. Emmanuel, I observe that the payment to Ms. Casimir-Hull appears to have come from the Bank of Nova Scotia (BONS) Account and is also listed as an expense against the proceeds of sale.

[10] Mr. Rosemond has provided receipts for the payments to Mr. Emmanuel and Ms. Casimir-Hull⁶ and it is clear that these amounts were paid in relation to valuations of the Sans Souci property which is incidental to the sale of the property. Given that these amounts were paid from other sources, they ought not to be deducted from the sale proceeds as this will be double accounting.

(iii) commission fees of \$24,000.00;

[11] Ms. Cazaubon initially disputed this amount saying that the standard commission rate in the real estate industry is five percent (5%) but she provided no evidence to support this assertion. Mr. Rosemond provided the Listing Agreement for Sale of Real Estate dated 17th July 2017,⁷ showing that the agreed commission rate was 6% and the receipt for payment of the commission amount.⁸ I therefore find that this amount is properly to be deducted from the proceeds of sale.

(iv) payment to Counsel, Leevie Herelle in the sum of \$850.00;

[12] Ms. Cazaubon disputes this amount on the basis that it is usually the purchaser of a property who bears the expenses for the drafting of an agreement for sale. She also queries the fact that the fees relate to searches and a radiation and questions why these amounts were expended. Mr. Rosemond indicates in his response that the radiation was in relation to a debt registered against the property.

[13] There is no rule that it is the purchaser who must prepare an agreement for sale and the vendor is equally entitled to have such agreement prepared. I see

⁶ See p. 58 and 129 of TB 2.

⁷ See p 139 of TB 2.

⁸ See p 134 of TB 2.

no merit in Ms. Cazaubon's complaint. Further, the amount charged for preparation of the sale agreement, searches and radiation as per the receipt from Mr. Herelle's Chambers was \$820.25⁹ and I find this amount to be a reasonable deduction from the sale proceeds.

(v) deduction for Mr. Rosemond's expenses in the amount of \$12,057.46:

[14] Ms. Cazaubon asserts that these expenses are not properly accounted for or proved and the receipts being relied upon seem contrived and self-serving. In the claimants' submissions, Counsel suggests that allowance can be made for the expenses in relation to the maintenance and upkeep of the property out of the proceeds of the sale and I note this.

[15] Mr. Rosemond says the claimants have presented absolutely no evidence disproving the duly exhibited documents. He exhibits a document which he says represents the breakdown of this \$12,057.46.¹⁰ The breakdown is contained in the table below.

Item	Cost	Evidence
(a) WASCO Oct 2013-Aug 2017	\$1,658.84	P 199- of TB 2 Payments total \$1994.13
(b) LUCELEC Sep 2013-Nov 2018	\$564.95	p.202 of TB 2
(c) Yard Cleaning bi-monthly Oct 2013-Oct 2018	\$2,850.00	p.159 and 162 of TB 2 Receipt at p 167 of TB 2
(d) House Cleaning	\$1,525.00	p. 161 of TB 2 Receipts at p 169-173
(e) Roof Leak Repair	\$1,600.00	p. 164 of TB 2 Receipt at p 174 of TB 2
(f) Purchase of 16Pk Jumbo Garbage Bags	\$161.12	p. 163 of TB 2
(g) Cleaning tools and agents	\$243.15	p. 163 of TB 2 Bills at p 179-180 totalling \$219.16
(h) House Sale Trips 20 trips	\$1,200.00	p. 165 of TB 2. In cross-examination, Mr. Rosemond said the rate for the trips was \$60.00
(i) NIC Clearance Payment	\$29.40	None provided
(j) House and Yard Cleaning Trips and House checks	\$2,100.00	P 204 of TB 2
(k) Miscellaneous	\$125.00	None provided

⁹ See p 158 of TB 2.

¹⁰ See p 157 of TB 2.

- [16] Mr. Rosemond would have paid himself the sum of \$12,057.46 as reimbursement for expenses associated with the administration which he says he incurred. This amount was paid from the BOSL account.¹¹ Article 850 of the **Civil Code of Saint Lucia**¹² provides that the expenses incurred by the testamentary executor in the fulfilment of his duties are borne by the succession. However, the executor must properly account for these expenses, and they must be related to the administration of the estate.
- [17] I accept that there would have been expenses to maintain the Sans Souci property before its sale in November 2018. However, Mr. Rosemond must provide evidence of the payments he says were made in that regard.
- [18] I accept that there would have been water and electricity charges. The exhibits with respect to the water charges show payments in the amount of \$1994.13 being made between 2013-August 2017, but Mr. Rosemond claims \$1,658.84 which I am prepared to accept given that the documented payments surpass that figure. He has not said why this is the case and I will accept that perhaps this is the amount which he paid out of pocket.
- [19] Mr. Rosemond exhibited a sheet with LUCELEC handwritten at the top, but the document does not assist me to determine the amount that he claims was expended. While I accept that electricity would have been paid for the property, Mr. Rosemond has failed to provide a proper account of the amount he claims. Such a statement could have easily been obtained.
- [20] The items listed at (c)-(e) above are accepted as expenses associated with the upkeep of the house at Sans Souci. Counsel for the claimants suggests that the expenses are not legitimate as the receipts for these items appear to have been drafted or created using the same device and signed by different persons. In cross-examination, Mr. Rosemond said he did not prepare the receipts, but he denied that they were not genuine.

¹¹ See p. 205 of TB 2.

¹² Chap 4.01 of the Revised Laws of Saint Lucia 2020.

- [21] Whilst it appears that the receipts look similar, they could have been typed by one person and the various providers of the services sign them given the nature of the services. I accept that in most of these cases, persons who perform house and yard cleaning services would not have receipts issued nor would they generate a receipt. It is acceptable that in these cases, a receipt be drawn up which they would sign to acknowledge having received the funds. This is what I believe happened in this case and I therefore accept the amounts for yard cleaning, house cleaning and roof repair and find that they are reasonable sums.
- [22] Mr. Rosemond claims reimbursement of \$1,200.00 for 20 trips ((h) above) in relation to the house sale viewing. He does not say over what period he made those trips and therefore has not assisted the Court with this expense. I accept that there would be viewing of the house, but Mr. Rosemond needed to provide more details.
- [23] Likewise, Mr. Rosemond claims reimbursement of \$2,100.00 for house and yard cleaning trips and house checks but provides no details. He has not properly accounted and proved this expense. Only \$219.16 of the expenses claimed for garbage bags and cleaning agents has been accounted for by Mr. Rosemond. The expense listed as NIC clearance payment is not associated with the Sans Souci property and would not be deducted from the sale proceeds. Mr. Rosemond has not accounted for what comprises miscellaneous expense of \$125.00 ((k) above).
- [24] Mr. Rosemond could have provided more details to assist the Court and refer to the relevant documents presented to support the expenses and not leave it to the Court to find them in the exhibits provided. As a result, I find that Mr. Rosemond has only accounted for the sum of \$7,853.00 of the \$12,057.46 which he claims to have expended. Therefore, Mr. Rosemond must reimburse to the sale proceeds the sum of \$4,204.46.

(vi) Other expenses

[25] The other expenses which were deducted from the proceeds of sale are: \$15,750.00 for vendor's tax and \$6,543.45 for property tax. These are not disputed.

[26] In conclusion, the amount allowed to be deducted from the proceeds of sale of the Sans Souci property is \$54,966.70. The amount left to be distributed in accordance with Clause 4 of the Will is \$345,033.30. Therefore, Ms. Cazaubon is to receive \$172,516.65; and Lorna Simon, Cecily James and Portia Joseph-Emmanuel are to receive \$57,505.55 each.

Property at La Fargue, Choiseul and Savannes Bay, Vieux Fort

[27] At Clause 5 of the Will, the testator bequeathed a half share of his property in La Fargue, Choiseul to Edith Cazaubon, and the remaining half to his sisters, Ruth Crichlow, Una Thomas, Catherine Meola Rosemond, Stephanie Ulrica Rosemond and Erin Felix in equal shares. At Clause 6 of the Will the testator bequeathed his property in Savannes Bay, Vieux Fort to Edith Cazaubon and her children in equal shares.

[28] In relation to the La Fargue and Savannes Bay properties, Mr. Rosemond reported that vesting deeds were prepared by Ms. Cazaubon's attorney at the time, Mr. Bryan Stephen and he signed them, but the documents were not completed, and he was not able to take the matter further. The vesting deeds were accompanied by a letter dated 1st June 2015 which advised that Ms. Cazaubon had instructed that the documents be prepared on her behalf. Mr. Rosemond says the deeds were not registered due to complications surrounding Ms. Cazaubon's attorney.

[29] Ms. Cazaubon agrees that she did give instructions for the drafting of the vesting deeds and they were drafted by Mr. Stephen and sent to Mr. Rosemond for signature, but he did not sign the documents as he suggests. In cross-examination, Ms. Cazaubon admitted that she had difficulty reaching her then attorney Mr. Stephen as she thinks there was some issue with him also. She also admitted that she did not approach any other attorney to prepare the vesting deeds not even her current attorney, Mr. Fraser.

[30] I always marvel at how persons who are entitled under a Will never stop to question how the various transactions required to administer an estate are to be financed. Where persons are entitled to monies, they must understand that there are certain expenses associated with the administration of an estate which must be taken care of. It is not for the personal representative to utilise his or her own funds but exercising all prudence, they are to manage these expenses from the resources available. It may mean that the amount due to a beneficiary may be reduced, but so long as the expenses are necessary, justified and accounted for, a personal representative escapes being found to have failed in his fiduciary duty to the beneficiaries.

[31] At the trial, Counsel for the claimants undertook to complete the vesting of the La Fargue and Savannes Bay properties to Ms. Cazaubon and indicated that she would pay the legal costs associated.

[32] Before I move on to the next bequest there are two issues which I need to resolve.

Administration of Estate Fees

[33] On 4th April 2019, Mr. Rosemond paid himself the sum of \$5,818.60 as administrator's fees from the Republic Bank Account No. 1030316. The question is whether he was entitled to this payment. The claimants say he is not.

[34] Counsel for the claimants refers to Article 846 of the Code which says that the duties of the office of an executor are performed gratuitously, unless the testator has provided for their remuneration. Counsel for the first defendant on the other hand refers to Article 850 of the Code which provides that the expenses incurred by the testamentary executor in fulfilment of his duties are borne by the succession.

[35] Article 850 is not applicable to the payment of an administrative fee. That article speaks to expenses incurred by an executor in carrying out his duties,

for example, upkeep of property to preserve it or transportation costs, and not to payment for serving as an executor. Article 846 is clear and in this case, the Will does not make provision for remuneration for his service as an executor. Therefore, Mr. Rosemond could only be paid this fee if the beneficiaries agree. Otherwise, he holds the office of executor gratuitously. In the circumstances, Mr. Rosemond would have to refund the Republic Bank Account No. 1030316 the sum of \$5,818.60.

Legal fees and costs

- [36] The question is whether the legal fees for the defence of the previous claim SLUHCV2019/0158 and the costs of these proceedings should be paid from the estate. The record reveals that the claimants have filed three claims against the first defendant and others, SLUHCV2015/0634 in which a notice of discontinuance was filed on 27th March 2019, SLUHCV2019/0158 in which a notice of discontinuance was filed on 6th March 2020 and this current claim, SLUHCV2019/0553. In relation to SLUHCV2019/0158, the claimants were ordered to pay costs in the sum of \$3,375.00 to the first defendant before this current claim could proceed.
- [37] The claimants submit that it is the action or inaction of the first defendant that prompted the filing of the current proceedings and he must therefore personally bear his own legal expenses. He was sued in his personal capacity as executor for breach of his duty and not as executor representing the estate. He is therefore liable to pay his fees for legal representation and costs ordered by the Court.
- [38] The claimants refer to the case of **Eileen Papone et al v James Anthony**¹³ where Hariprashad-Charles J observed at paragraph 79 that: "costs in a probate action are at the discretion of the Court." The Court found that the action was necessitated by the defendant's conduct, or misconduct and that he should bear his own costs personally.

¹³ BVIHCV2010/0113, (delivered 16th November 2011), unreported at para 79.

[39] They also refer to **Estelle Wheatley v Darwin Blyden**¹⁴ where the Court found that the defendants should personally bear the costs of their defence of this claim and that such costs are not to be defrayed from the estate. Costs in a probate action are always at the discretion of the Court. Ellis J entertained no doubt that this action was necessitated by the defendants' own inappropriate unreasonable and dilatory conduct.

[40] The claimants submit that the sum of \$3,312.50 spent by Mr. Rosemond defending Claim No. SLUHCV2019/0158 should not be awarded as an expense of the estate as (i) on the withdrawal (discontinuance) of the said claim costs was awarded in the sum of \$3,375.00 which were duly paid and (ii) the claim was filed because of Mr. Rosemond's conduct.

[41] I am of the view that Mr. Rosemond's fees in relation to defending the 2015 claim, SLUHCV2019/0158 ought not to be borne by the estate as he was personally awarded costs on its discontinuance. The claim was brought against him and not the estate.

Monetary Gifts

[42] At Clause 9 of the Will the testator gave the following pecuniary gifts, the relevant ones being:

(a) From the proceeds of his policy at CLICO International Life Insurance Limited, (i) 50% to Edith Cazaubon and (ii) the remaining 50% to Lorna Simon, Cecily James and Portia Joseph-Emmanuel in equal shares

[43] Mr. Rosemond's account in relation to the CLICO life insurance policy is that sometime in 2014, he contacted a CLICO agent who advised him that payment had been made to Ms. Cazaubon, the sole beneficiary on the policy. Ms. Cazaubon confirmed in cross-examination that she had received some of the money from CLICO. It appears that Mr. Rosemond was not aware. There is therefore nothing further to be dealt with as part of the administration of the deceased's estate save that the other beneficiaries should be notified of their status in relation to this bequest.

¹⁴ BVIHCV2012/302, (delivered 17th April 2017), unreported.

(c) From the monies held in his chequing account at Bank of Nova Scotia to his children, Edith Cazaubon, Lorna Simon, Cecily James and Portia Joseph-Emmanuel in equal shares.

(d) From the monies held in his savings account at Bank of Nova Scotia 50% to his children, Edith Cazaubon, Lorna Simon, Cecily James and Portia Joseph-Emmanuel; 10% to Prisca Mangal and 40% to his nephew Shawn Rosemond, and his nieces Denise Felix and Mosa Felix

[44] In relation to the chequing account no. 518 and savings account no. 70085 held at BONS now Republic Bank, Mr. Rosemond reports that these two accounts were converted into an executor's account with the number 1030316. As at 27th November 2015, the balances in the chequing and savings accounts were \$66,931.22 and \$124,437.21 respectively. The new savings account opening balance as at 27th November 2015 was \$191,368.43 with 35% being from the chequing account and 65% from the savings account.

[45] From the documentary evidence produced by Mr. Rosemond the following expenses were paid prior to the amalgamation from the chequing account 518: (i) the deductions of \$2,630.30 for legal fees in relation to SLUHCV2015/0634 which should not have been paid from the estate as decided above, (ii) \$125.00 paid on 3rd July 2014 for the safety deposit box and (iii) funeral expenses of \$20,708.00. From the savings account 70085, the following payments were made \$1795.22 for legal fees in relation to probate of the Will and \$10.00 for a manager's cheque on 12th November 2014.

[46] The payments to the beneficiaries with the exception of the claimants were made between 2016 and 2018 but according to Mr. Rosemond's 6th March 2017 letter he would have used the balance in the account as at 31st December 2016 to calculate the respective shares due to each beneficiary which was \$193,946.24 (increase due to interest). When Mr. Rosemond did his calculations, this is the figure which he used. However, he would have erred in taking into account one expense which he ought not to have.

[47] From the expenses accounted for and paid prior to November 2015, the sum of \$2,630.30 paid as legal fees ought not to have been paid from the estate

and was a personal expense. In light of this this amount would have to be refunded by Mr. Rosemond to the Republic Bank Savings Account 1030316.

[48] In light of the above, the balance as at 31st December 2016 should have been \$196,576.30. The portion ascribed to the chequing account (35%) would be \$68,801.71 and the savings account (65%) would be \$127,774.59. The expenses paid from the accounts have been factored into my analysis as the executor is to pay the legitimate expenses related to administering the account before he pays out any monies pursuant to the Will. This is clearly understood by Counsel for the claimants given his submissions.

[49] Based on the figure as at 31st December 2016 the allocations should have been as follows:

- (a) From the chequing account portion of the new account: Edith Cazaubon, Lorna Simon, Cecily James and Portia Joseph-Emmanuel would be entitled to receive the sum of \$17,200.42 each.
- (b) From the savings account portion of the new account: Edith Cazaubon, Lorna Simon, Cecily James and Portia Joseph-Emmanuel would be entitled to receive the sum of \$15,971.83 each (50% share); Prisca Mangal the sum of \$12,777.46 (10% share); Shawn Rosemond, Denise Felix and Mosa Felix the sum of \$17,036.61 each (40% share).

[50] After November 2016 when calculations would have been done by Mr. Rosemond, the following expenses were paid from the Republic Bank account no. 1030316:

- (i) Collis Barrow Chambers for Administration of Estate-\$5,818.60-20th December 2016
- (ii) Administration of estate fee-SRosemond-\$5,818.60-4th April 2019
- (iii) Account Activation-\$20.00
- (iv) Leevie Herelle Chambers fees SLUHCV2019/0158-\$3312.50-7th June 2021
- (v) Wire fees-\$15.30-7th June 2021
- (vi) Valuation fees-Giselle Casimir-Hull-\$500.00-21st July 2017

[51] Of the expenses above, I find that the amounts for items (ii) and (iv) are personal expenses of Mr. Rosemond and he ought properly to refund these amounts which total \$9,131.10 to the Republic Bank account no. 1030316. All the other expenses are properly charged against the estate.

[52] In light of the forgoing, the following is a summary of the amounts to be paid to each beneficiary and any short/over payment:

Name	Amount which ought to have been paid	Amount paid and date	Amount due or to be refunded
Edith Cazaubon	\$33,172.25	\$-	\$33,172.25 due
Lorna Simon	\$33,172.25	\$33,625.95-(07/12-18)	\$453.69 (refund)
Cecily Tobierre	\$33,172.25	\$33,625.95-(24/03/17)	\$453.69 (refund)
Portia Joseph-Emmanuel	\$33,172.25	\$-	\$33,172.25 due
Prisca Mangal	\$12,777.46	\$11,061.42-(20/12/16)	\$1,716.04 due
Shawn Rosemond	\$17,036.61	\$14,669.28-(20/12/16)	\$2,367.33 due
Denise Delix	\$17,036.61	\$14,751.98-(20/12/16)	\$2,284.63 due
Mosa Felix	\$17,036.61	\$14,751.98-(20/12/16)	\$2,284.63 due

(g) From his shares held in the Templars Association Limited of the Mount Herman Masonic Lodge, Mount Hermon, Sans Souci to his daughter, Edith Cazaubon.

[53] Mr. Rosemond reports that he made a query to the secretary of the Mount Herman Masonic Lodge, but he was not provided with details. However, a request was made for the monies held by the deceased to be gifted to the Lodge to assist with their financial difficulties. He says he asked his lawyer to assist but then stopped further work on this due to the multiple court cases he was faced with.

[54] At Clause 11 the testator left all the remainder of his property to his children, Edith Cazaubon, Lorna Simon, Cecily James and Portia Joseph-Emmanuel in equal shares.

Monies at Bank of Saint Lucia (BOSL)

[55] Ms. Cazaubon suggests that Mr. Rosemond has not accounted for the monies at BOSL. This account is provided for in Clause 9(c) of the Will. However, Ms.

Cazaubon is not a beneficiary of these monies and therefore cannot claim an account in that regard. In fact, none of the persons who are beneficiaries under this clause 9(c) are parties to this claim.

Safety Deposit Box

- [56] A Scotiabank Safety Deposit Box in the name of the deceased was closed on 5th May 2016 and Mr. Rosemond received the contents but according to Ms. Cazaubon he has not accounted for the contents. Mr. Rosemond simply says that the contents are in his custody and provides a list of the items which were in the safety deposit box.¹⁵ Mr. Rosemond needs to take steps to share the contents however he can.

Shares at LUCELEC

- [57] According to a letter dated 28th May 2015 to Ms. Cazaubon's then attorney, Mr. Stephen, the deceased had shares in LUCELEC.¹⁶ The letter does not disclose how many, and Mr. Rosemond provides no information or account for these shares and simply says that the shares are still in the name of the deceased. Further steps need to be taken by Mr. Rosemond.

Costs of these proceedings

- [58] Mr. Rosemond's submissions focus on whether these proceedings were necessary at all. He argues that when the letter of March 2017 was sent to the claimants, they raised no formal objections, nor did they seek any further information prior to filing this claim. He says it begs the question whether this trial was necessary to have engaged the Court only to then abandon three of the four reliefs sought. Mr. Rosemond submits that the claimants' actions were unnecessary and an abuse of process. He also contends that Ms. Cazaubon in cross-examination was evasive, nonchalant and at times untruthful in particular as it relates to the 6th March 2017 letter which she denied knowing about.
- [59] The conduct of the parties is important in determining whether Mr. Rosemond's legal costs on this claim should be borne by the estate.

¹⁵ See p. 192 of TB 2.

¹⁶ See p. 39 of TB 2.

- [60] Mr. Rosemond denies any errors, missteps or breaches of duty as alleged by the claimants. He says that the claimants' allegations against him are designed to cause mischief and frustrate the administration of her father's estate. He further contends that it is her own fault that she has not received the proceeds of sale from the sale of the property by (a) not having and or refusing to provide him with her banking information or instructions for receipt of the monies and (b) by disadvantaging herself and her siblings by engaging in costly and unnecessary litigation at the expense of the estate.
- [61] Mr. Rosemond's attorney in response to Ms. Cazaubon's letter of 16th April 2015, noted that no properties have as yet been vested in the beneficiaries and that no specific funds were provided for the cost of vesting the said properties. Consequently, he advised that the funds required for vesting would have to come from funds bequeathed to the beneficiaries who receive the immovable property. He further advised that if no money was left to the persons in whom properties were to be vested, they would have to pay their contribution towards the vesting.¹⁷
- [62] It is the case that Mr. Rosemond has not vested the properties in Ms. Cazaubon as directed by the Will, but it is also clear that Ms. Cazaubon did not make things easy for him. He obtained the probate of the Will on 13th August 2014 and between April 2015 and June 2015 she had her lawyers write to Mr. Rosemond twice making certain requests. Mr. Rosemond's response of 30th April 2015 sought to provide an update on the status of matters which did not meet Ms. Cazaubon's standard and therefore she sought to prepare the vesting deeds in relation properties bequeathed to her and then filed an action against Mr. Rosemond SLUHCV2015/0634 in August 2015. Ms. Cazaubon admits that she discontinued SLUHCV2015/0634 and costs were awarded against her.

¹⁷ See para 7(iv) of letter dated 30th April 2015 at p 28 of TB 2.

- [63] It appears that in the year following the grant of probate, Mr. Rosemond had to focus on the letters and the court action he received from the claimants rather than on administering the estate.
- [64] I also note that following the 2015 claim, the claimants filed another claim SLUHCV2019/0158 which was still subsisting when this current claim was filed later in 2019. The two latter claims sought the same relief against the defendants and consequently, the claimants discontinued SLUHCV2019/0158. The claimants were ordered to pay Mr. Rosemond's costs in the sum of \$3,375.00. As noted previously, in this claim, three of the four reliefs sought have now been abandoned.
- [65] On 6th March 2017, Mr. Rosemond would have written to the claimants by separate letters¹⁸ indicating that he was 'now in a position to deliver on the bequests made in the Will'. He provided an account and status of the CLICO life insurance policy, the Chequing and Savings Accounts at BONS and how he arrived at the sum stated to be payable to each of the beneficiaries. Ms. Cazaubon in cross-examination said she was not familiar with this letter. She was asked to provide her email address which she did and it was pointed out to her that the letter was attached to the email and sent to the very same address which she provided in Court. To this she said that the only email she remembers getting was for \$33,000.00 and she sent it to her attorney. She said she never got the letter and then she said she could not remember seeing that letter, but she knew there was an email. Interestingly, Ms. Cazaubon remembers seeing something about \$33,000.00 but the only mention about \$33,000.00 was in the body of the letter. I therefore do not believe her when she says she never saw the letter of 6th March 2017.
- [66] If the claimants wished to obtain any further information or clarification, they could have asked their attorney to engage Mr. Rosemond. There was an opportunity to ask questions because that letter was sent whilst there was a pending claim against him. In addition, the very same email which Ms. Cazaubon says she received, had a request for her to provide instructions on

¹⁸ See letter to Ms. Cazaubon at p 130 and to Ms. Joseph-Emmanuel at p 154 of TB 2.

her preferred method of payment. She never provided those and simply passed the letter to her attorney and admitted that she gave no instructions to respond to the email/letter.

[67] Mr. Rosemond as executor is obligated to take charge of and gain possession of all assets of the estate where necessary, in order to carry out the obligations for payment of all debts and claims against the estate and the distribution of the estate in accordance with the wishes of the testator. This must be done diligently.

[68] In relation to this current claim, I am of the view that Mr. Rosemond whilst he has not completed the administration of the estate, he has attempted to communicate with the beneficiaries, and in some cases, he has paid persons their entitlement. He obtained the grant timeously and then was faced with legal battles by the claimants. It is clear that Mr. Rosemond's account provided by way of 6th March 2017 was not supported by any documentary proof of the expenses which he referred to and whilst the claimants could have engaged him and requested further particulars, he has an obligation to provide the relevant evidence.

[69] Mr. Rosemond appears to have tried to administer the estate of the deceased but he has not accounted for all the expenses he incurred adequately. He paid monies to beneficiaries on 20th December 2016 and as indicated above he could not pay the claimants because they never provided the information requested. However, I am of the view that this does not justify costs being awarded to the claimants given their conduct and the fact that they only pursued one of the four relief sought. I find that both the claimants' and the first defendant's conduct in this matter wanting and, in such circumstances, they should each bear their own costs. I apply the learning in **Eileen Papone** and **Estelle Wheatley** and find that there is no reason why the estate should have to pay for the executor's legal costs.

Conclusion on the account

[70] Administration of an estate is no small feat, and beneficiaries make demands and expect that an executor must know how and what to do. What this

accounting exercise has revealed is that it is not an easy job and without proper legal advice, an executor can easily go wrong.

[71] Mr. Rosemond is advised that he should take all reasonable steps to complete the administration of the estate as far as is possible as delay simply complicates administration of estates. The beneficiaries are also well advised that they may need to assist to defray legal costs in relation to the vesting of their gifts. There needs to be a more collaborative approach between the parties as any other approach simply results in delay and

[72] In light of the foregoing discussion and review of Mr. Rosemond's account, I make the following Orders:

1. Mr. Rosemond shall refund the proceeds of sale funds the sum of \$4,204.46 representing expenses not accounted for and said to have been paid out of the sale proceeds within thirty (30) days of the date of this judgment. (paragraph [24])
2. Mr. Rosemond shall thereafter pay the proceeds of sale of the Sans Souci property to the persons entitled in accordance with paragraph [26] above.
3. (a) Counsel for the claimants shall prepare the relevant deeds in relation to the vesting of (i) a half share of the La Fargue property situate in Choiseul in the first claimant, Edith Cazaubon and (ii) the Savannes Bay property situate in Vieux Fort in Edith Cazaubon and her children, for the signature of Mr. Rosemond.

(b) All expenses associated with the preparation, execution and registration of the vesting deeds shall be borne by the first claimant, Edith Cazaubon and shall be deducted from the monies payable to her from the estate pursuant to the Will.
4. Mr. Rosemond shall refund the Republic Bank Savings Account No. 1030316 the amount of \$11,761.30 representing expenses which

ought not to have been paid by the estate within four (4) months of the date of this judgment. (paragraphs [47] and [51])

5. Mr. Rosemond shall thereafter complete the payment of monies from the Republic Bank Savings Account No. 1030316 in accordance with the table set out at paragraph [52] above, having regard to monies which may still be due to be paid or require to be refunded.
6. Mr. Rosemond shall endeavour to complete the administration of the estate of the deceased and where he is unable to do so to advise the beneficiaries by way of a written report of the reasons.
7. Each party shall bear their own costs on this claim.

[73] I close with sincere apologies to the parties and Counsel for the delay in the delivery of this decision and thank them for their patience.

**Kimberly Cenac-Phulgence
High Court Judge**



By The Court

Registrar