

THE EASTERN CARIBBEAN SUPREME COURT:

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

CLAIM NO. SLUHCV2024/0137

BETWEEN:

LERONE SMITH

Claimant

-and-

PETRA DONATIEN

Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances:

Ms. Shari - Ann Walker and Mr. Rajiv Lennie for the Claimant
Mr. C. Vern Gill for the Defendant.

2026: January 29 – Trial
February 02 – Decision

JUDGMENT

Claim to set aside grant of probate

FACTS:

[1] **PARIAGSINGH J:** Before the Court is a Fixed Date Claim filed on 4 April 2024 by Mr.

Lerone Smith (“the Claimant”) seeking revocation of a grant of probate issued on 7 December 2023 in the estate of the late Ferick Hyde Smith also known as Ferick Smith also known as Hyde Smith (“the Deceased”).

[2] The Deceased died on 6 November 2021 in London, England. The probate record exhibited states that the Deceased was “in his lifetime of 38 Rushford Road, London SE4 1SG, England” and that his place of death was “36 Becket Avenue, London, England”.

- [3] Probate was granted in Saint Lucia on the basis of a notarial will dated 2 November 2012, executed before Notaries Royal in Saint Lucia. The will appoints the Defendant, Ms. Petra Donatien, as executrix and leaves the Deceased's estate to three named children of the Defendant and the Deceased as universal residuary legatees.
- [4] The Claimant is a biological son of the Deceased. That fact was never seriously disputed on the pleadings and the Defendant admitted in her oral evidence that she is aware of that fact.
- [5] The Claimant does not challenge the validity of the will. The Claim is confined to a single contention that the Registrar of the Supreme Court of Saint Lucia lacked jurisdiction to grant probate because, at the time of his death, the Deceased was domiciled in the United Kingdom.
- [6] The Defendant disputes that proposition of law. She contends that the Registrar of the Supreme Court could not refuse the grant of a notarial will once presented that on its face met all the testamentary and legal requirements. She further denies that the Claimant is an heir-at-law and the Claimant's contention that the Deceased was not domiciled in Saint Lucia.
- [7] The matter came on for trial on 29 January 2026. On that day, the Claimant requested to participate remotely and to call his witness, Ms. Karen Malcolm, by Zoom. No request was made prior to the trial and it ought to have been known that, in light of the Registrar's direction that all trials are to be conducted in-person only, parties were expected to appear in person. By an Order made the same day, I refused to permit the Claimant or his witness to give evidence remotely.
- [8] Crucially, no formal application was made by the Claimant under Rule 29.8 of the **Civil Proceedings Rules (Revised Edition) 2023** ("CPR") to admit the Claimant's witness statement or that of Ms. Malcolm without oral evidence. As a result, the Court ordered that both witness statements, filed on 7 March 2025, be struck out.

[9] The only oral evidence received by the Court was that of the Defendant, who was cross examined by counsel for the Claimant.

ISSUES:

[10] The issues for determination are:

- 1) Whether, as a matter of Saint Lucian law, the jurisdiction to grant probate of a Saint Lucian notarial will depends on the domicile of the deceased at death.
- 2) If domicile is jurisdictionally relevant, whether the Claimant has proved, on the admissible evidence, that the Deceased was domiciled in the United Kingdom at the date of death.
- 3) Whether any failure to state domicile, or any alleged misstatement, renders the grant of probate liable to revocation.

LAW:

Civil Code: succession and domicile

[11] The Claimant relies principally on Articles 542 to 545 of the **Civil Code of Saint Lucia**¹.

Those provisions address the devolution of succession and the role of domicile in determining which law governs movable and immovable property. They state:

- “542. The law, in regulating a succession, considers neither the origin nor the nature of the property composing it. The whole forms but one inheritance which is transmitted and divided according to uniform rules, or the dispositions made by the proprietor.
543. The place where a succession devolves is determined by the domicile.
544. Successions devolve by death from the moment at which it occurs.
545. Succession in the case of movable property is governed by the law of the domicile; in the case of immovable property by the law of Saint Lucia.”

¹ Cap 4.01 of the Revised Laws of Saint Lucia.

[12] Article 543 provides that succession opens at the place of the deceased's domicile. Article 545 addresses the application of law to movable property by reference to domicile.

[13] Counsel for the Claimant submitted that Articles 542 – 545 ought to be interpreted that the domicile of the deceased person is critical in determining whether a Court has jurisdiction to issue a Grant and if a grant could be issued with respect to a deceased estate who was domiciled outside of Saint Lucia at death then the Code would have expressly said so.

[14] The Defendant relies on Articles 794 and 795 of the Civil Code, which deal expressly with the proof of wills. They provide:

“794. All wills must be presented for probate to the Supreme Court, together with a certificate of the death of the testator.

Where no certificate of death can be procured, the person presenting the will must adduce such other evidence of death as the Court may require.

In matters of probate “Court” includes Judge or Registrar of the Supreme Court. (Substituted by Act 23 of 1916)

795. Probate is granted as of course in case of the original or a certified copy of a notarial will; in the case of other wills, the authenticity of the handwriting of the testator, or the attestation of his will, must be proved by affidavit, or otherwise as may be directed.”

[15] Article 794 requires all wills to be presented to the Supreme Court for probate with proof of death.

[16] Article 795 provides that probate “shall be granted as of course” in the case of the original or a certified copy of a notarial will.

[17] Counsel for the Defendant submitted that based on the Vagliano rule as expounded in **Bank of England v Vagliano Brothers**² the provisions of the Civil Code are to be interpreted strictly on its face and in this regard, the explicit language of Article 795 is

² [1891] AC 107

mandatory and leaves no room for a preliminary inquiry into domicile once a facially valid notarial will is produced.

[18] Article 798A was also relied upon in submissions as demonstrating that the Code expressly contemplates probate in Saint Lucia in cross-border situations, including where a person may have died abroad or ceased to be domiciled in Saint Lucia, it provides:

“798A. When any person who has had and has ceased to have his domicile in Saint Lucia dies outside Saint Lucia having made, outside Saint Lucia, a will which is valid under the law of Saint Lucia, and such person leaves property in Saint Lucia, such will may be proved in Saint Lucia as if it had been made and such person had his or her domicile therein. (Added by Act 34 of 1956)”

[19] The Claimant placed some reliance on the **Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estate) Rules, Saint Lucia**³ (“NCPR”), suggesting that they require domicile to be stated and considered.

[20] The Defendant responded that subsidiary rules cannot override the Civil Code, a point supported by the Court of Appeal decision in **Lucien Joseph v Delia Daniel**⁴, which emphasised codal interpretation principles and the primacy of the Code.

EVIDENCE:

[21] By Order of 29 January 2026, the witness statements of Lerone Smith and Karen Malcolm were struck out. As a result, the Claimant is not entitled to rely on his narrative evidence regarding the Deceased’s residence, work history, tax affairs, or intentions. Similarly, the HM Revenue and Customs correspondence and other UK-based documentation exhibited to the Claimant’s statement are of no evidential value.

[22] The evidence properly before the Court comprises of the Defendant’s witness statement and her evidence in cross examination. Her evidence included the notarial will dated 2 November 2012, the grant of probate dated 7 December 2023, the probate record stating the Deceased’s London address and place of death and documentary evidence

³ Statutory Instrument 104/2017.

⁴ SLUHC VAP2023/0026.

exhibited including Saint Lucian identification documents, land records of ownership and the existence of a mortgage in the Defendant and the Deceased's names.

FINDINGS:

Standing:

[23] The Claimant relies on his interest as the Deceased's son and on Article 796 of the Civil Code in response to the Defendant's challenge to his standing. Article 796 permits interested persons to contest the validity of the will. However, the Claimant is not a beneficiary under the will and does not challenge its validity. Article 796 therefore does not assist the Claimant.

[24] Counsel for the Claimant indicated in her submissions that the Claimant did commence challenging the grant issued by filing a caveat in Saint Lucia on 20 March 2023. However, he did not prosecute the caveat, it lapsed and the grant was issued.

[25] Counsel for the Claimant further submitted that upon learning that the Defendant was taking steps to reseal the grant issued in Saint Lucia in the United Kingdom, the Claimant filed a caveat to restrain the Defendant. The Claimant then launched this claim, seeking to revoke the grant in the first instance with an intention to launch another claim to challenge the validity of the will.

[26] When pressed on whether the resealing of a grant issued in Saint Lucia can be challenged in the United Kingdom in circumstances where there is no challenge to the validity of the Will counsel quite tactfully stated that she was not able to speak to this except to say that a caveat has been lodged in the United Kingdom.

[27] Whilst I am not persuaded by the Claimant's arguments, I accept that if the grant is set aside, the issue then becomes whether a notarial will can be probated in the United Kingdom. Again, counsel for the Claimant could not speak to this. Counsel for the Defendant submitted that a notarial will made in compliance with the Civil Code of Saint Lucia, which deals with property in Saint Lucia, has to be probated in Saint Lucia.

[28] If the will is not admitted to probate in Saint Lucia or the grant is not resealed in the United Kingdom, the Claimant may have an interest as a beneficiary on intestacy. On that basis I will not dismiss the claim on the basis of standing.

Domicile:

[29] The Court cannot rely on the struck-out evidence to make findings about domicile. What remains is limited but important and includes the probate record which records a London address and death in London.

[30] The Defendant accepted that the Deceased lived and worked in England and paid tax there. Against that stands unchallenged evidence of Saint Lucian nationality, land ownership, and continuing ties.

[31] On this evidence, the Court cannot safely make a definitive finding that the Deceased had abandoned a Saint Lucian domicile of origin and acquired a domicile of choice in the United Kingdom.

[32] At most, the evidence establishes substantial connections to England. It does not establish domicile on a balance of probabilities to England.

[33] On the contrary, the Defendant's evidence, which I accept, is that from 1999 to the time of the Deceased's death they both travelled to and from England living as man and wife. This was no fleeting relationship. This relationship bore three children and significant joint liability of the parties in Saint Lucia in the form of a mortgage. The parties acquired jointly a property which they treated as their home.

[34] On a balance of probabilities, I am satisfied that whilst the deceased had and maintained substantial connections to England, at the time of his death the Deceased did not abandon his Saint Lucian domicile or acquired a domicile of choice elsewhere.

ANALYSIS OF THE ISSUES:

Issue 1: Does probate jurisdiction depend on domicile?

[35] This issue sits at the heart of the claim. The Claimant's case is built on a simple chain; (i) the Civil Code makes domicile central to succession, (ii) the Deceased was domiciled in the United Kingdom, so (iii) the Registrar had no jurisdiction to grant probate in Saint Lucia and the grant must be revoked. That chain only works if the first link is right in law and as such this issue turns on the proper interpretation of the Civil Code.

[36] I start with the structure of the Civil Code. The Claimant's submissions lean on Articles 542–545 and treat them as jurisdiction conferring or jurisdiction limiting provisions. The Defendant's submissions treat those provisions as conflict and devolution rules, while pointing to Articles 794–795 as the true probate gateway.

[37] Articles 542–545 are located in the part of the Code that deals with "Successions". They speak to how a succession opens and the law that governs devolution. The language the Claimant relies on is that succession opens at the domicile, and movable property is governed by the law of domicile. That is important in many disputes. It can determine what law governs. It can determine where proceedings ought to be brought. But the question here is narrower: is domicile a jurisdictional condition precedent to the act of granting probate of a will executed in Saint Lucia in notarial form? Articles 542 – 545 do not answer this question. They do not purport to confer or restrict the Court's jurisdiction to admit a will into probate.

[38] However, on the face of the Code, there is a separate and very direct answer. The Code has specific provisions dealing with probating wills. Article 794 requires all wills to be presented for probate to the Supreme Court with proof of death. Article 795 then draws a sharp distinction between types of wills and provides that probate is granted "as of course" in the case of the original or a certified copy of a notarial will. That "as of course" language is the hinge of the Defendant's case.

[39] The Claimant's response, as I understood it, is that Article 795 cannot be read in isolation. He says it must be read subject to the rules on succession and domicile. He

also says the **NCPR** contemplate domicile being stated, and that requirement must mean something.

[40] I accept the Claimant's first point only to this extent that no provision of the Code should be read in isolation. But when you read the Code as a whole, the Claimant's proposed hierarchy is the wrong way around. The provisions expressly dealing with probate are the natural starting point for a question about the Registrar's power to issue probate. The succession provisions then do their work at the next stage, that is, what property is affected, what law governs distribution, what rights arise, and what forum is appropriate for contentious disputes.

[41] Put plainly, probate and succession are related, but they are not the same act. Probate is a formal act of recognition. The Court accepts the will as a will and authorises an executor to act. Succession is the substantive question, who is entitled to what, under what law, and in what proportions. The Code reflects that distinction by placing "proof of wills" provisions in a different section and by using the strong "as of course" language for notarial wills.

[42] The strength of the "as of course" phrase matters. It is mandatory. It admits of no discretion once the formal requirements are satisfied. If domicile were intended to be a gatekeeper, one would expect the Code to say so in the probate provisions themselves, especially for notarial wills. Instead, Article 795 seems designed to give notarial wills a privileged status, once the proper form is produced (original or certified copy) and death is proved, probate follows as a matter of course.

[43] The Claimant argues that Article 795 makes no mention of "domicile" and any interpretation that a valid will ought to be probated regardless of the domicile does not accord with the **Vagliano Rule**. I do not accept this. The Claimant's reading would force the Court to insert a condition that the Code does not articulate; "probate shall be granted as of course, provided the testator was domiciled in Saint Lucia." That is a significant addition which in fact goes against the **Vagliano Rule** which states that unless there is a valid or cogent reason for going beyond a Code, it should be interpreted

internally or by reference to the language contained therein, without additions to or subtractions therefrom, without enquiring into the previous state of the law or otherwise resorting to external aids to its construction. It changes the nature of Article 795. It turns “as of course” step into a potentially contested preliminary trial on domicile.

[44] Similarly, the Defendant relied on the Court of Appeal’s guidance in **Lucien Joseph v Delia Daniel**. The key point from that authority is that we do not treat the Code as a common law statute to be “improved” by implication. It is read in its own terms, by its own scheme, and we avoid adding words that are not there unless the Code’s language compels it.

[45] On that approach, the Claimant’s argument struggles. Articles 542–545 do not use the language of jurisdiction to grant probate. They speak to where succession opens and which law governs. Those concepts are often used in jurisdictional arguments, but they are not, in themselves, a direct limitation on the Court’s ability to grant probate of a Saint Lucian notarial will.

[46] Article 798A reinforces the same idea in a different way. From the parties’ reliance on it, it is treated as recognising that probate in Saint Lucia may be relevant even where death occurs abroad or where the deceased’s personal connecting factors are not wholly Saint Lucian. That fits more naturally with the Defendant’s position, Saint Lucia can and does entertain probate processes connected to Saint Lucian property and Saint Lucian testamentary instruments, even if other jurisdictions also have an interest.

[47] The Claimant also looked to the **NCPR**. I accept that those rules may require certain information to be stated in the application process, including matters going to identity, status, and sometimes domicile. But the rules are subordinate to the Civil Code. That is not controversial. The Defendant anchored that point in **Lucien Joseph v Delia Daniel**, which is clear authority in this jurisdiction that subsidiary legislation cannot override the Code and must be read in conformity with it.

[48] In practical terms, even if the Rules contemplate that domicile should be stated, that does not convert domicile into a substantive statutory precondition that defeats Article

795's "as of course" grant. At most, it may give rise for the need for clarification but those are different arguments. The Claimant did not plead fraud or deliberate concealment. His case is a hard jurisdictional bar.

[49] It is also telling that the Claimant does not challenge the notarial will as a will. He accepts it exists and was executed. He does not plead incapacity, undue influence, or forgery. That makes Article 795 even more central. The Code gives notarial wills a privileged evidential status precisely because they are executed before notaries with formal safeguards. Where the will's authenticity is not in dispute, the Code's design points strongly toward probate being a formal step, and contentious matters being resolved later, if necessary, in proceedings that are framed for that purpose.

[50] For those reasons, I conclude that domicile is not a jurisdictional prerequisite to the Registrar granting probate of a Saint Lucian notarial will. The Registrar's jurisdiction is derived from Articles 794–795. The Claimant's reliance on Articles 542–545 does not displace that.

Issue 2: If domicile mattered, did the Claimant prove United Kingdom domicile on the admissible evidence?

[51] This issue is technically conditional, because it only becomes decisive if I am wrong on Issue 1. Still, the parties argued domicile heavily, and it is important to explain why the evidential ruling on 29 January 2026 changes what can be decided.

[52] The Order of 29 January 2026 is not a side note. It is central. The Court refused the request for the Claimant and his witness to give evidence remotely and because no CPR 29.8 application was made, the Court struck out both witness statements filed on 7 March 2025.

[53] The immediate consequence is that the Court cannot rely on the Claimant's narrative evidence about the Deceased's life, tax affairs, intention, or settled residence in the UK. It also cannot rely on Ms. Malcolm's account of a long-term relationship and the Deceased's employment history. Those were likely the Claimant's strongest domicile materials. But they are not evidence in the case once struck out.

[54] So, what is left on domicile? First, there is the probate record itself, which states a London lifetime address and a London place of death. That is admissible documentary material. It is also a strong indicator of ordinary residence at the end of life. But ordinary residence is not always the same thing as domicile.

[55] Second, there is the Defendant's oral evidence. The Order expressly records that the Court received the Defendant's evidence and that she was cross-examined by counsel for the Claimant. From the materials, the Defendant accepted key points: that the Deceased lived and worked in England and paid income tax there. Those admissions support the proposition that England was the centre of his day to day life.

[56] Third, there is the Defendant's documentary case. She relied on Saint Lucian identification documents and on Saint Lucian property and mortgage documentation. Those documents support continuing ties to Saint Lucia.

[57] In a normal case, the Court would weigh all of that against the Claimant's evidence of intention, settled permanence, and abandonment of Saint Lucian domicile. But here, that balancing evidence is missing because it was struck out. That is not a minor deficiency. Domicile often turns on intention. Intention is usually proved through the person's conduct and life narrative, often via witnesses. That is exactly the category of evidence that is now excluded.

[58] On the remaining record, the Court could likely find that the Deceased was living in England at death and for a substantial period before death. It could likely find that he worked and paid taxes there. But it would be far harder to make the next step: that he had formed the fixed and settled intention to reside there permanently or indefinitely, and that he had abandoned any Saint Lucian domicile of origin.

[59] The Defendant's Saint Lucian ties, being the only complete narrative evidence left standing, would loom larger. The Court is not obliged to accept everything she says, but the fact remains, the Claimant is left without admissible narrative evidence to establish the decisive "intention" element of domicile.

[60] So even if domicile were jurisdictionally relevant (which I have rejected), the Claimant would still face a serious burden problem. The best the Court could properly do is acknowledge strong English connections but conclude that the Claimant has not proved abandonment of the Deceased's Saint Lucian domicile and acquisition of a domicile of choice in England on a balance of probabilities.

[61] The court accepted the Defendant's evidence that the Deceased and Defendant lived together as partners from 1999 until the Deceased's death, travelling between England and Saint Lucia, raising three children, sharing financial liabilities, and jointly owning a home in Saint Lucia. On the balance of probabilities, despite the Deceased's ongoing connections to England, the court found that his domicile of choice at death remained Saint Lucia, his domicile of origin.

Issue 3: Does any failure to state domicile, or any procedural defect, justify revocation?

[62] The Claimant also sought to attack the grant by reference to procedural requirements said to include stating domicile. The idea is that if domicile was misstated or omitted, the grant is defective and should be revoked.

[63] I approach that in two steps: (i) what is actually pleaded and proved, and (ii) what remedy follows.

[64] The Claimant states that the Application for Probate was irregular because the Defendant failed to indicate the domicile of the Deceased on the Oath of Executors Form. The Claimant's complaint is not framed as fraud, deliberate concealment, or material non-disclosure in the probate application. It is framed as an absence of jurisdiction based on domicile.

[65] That matters because revocation for non-disclosure is a distinct legal pathway. It requires a particular kind of allegation and proof. It usually involves showing that something material was withheld from the Court in obtaining the grant.

[66] Here, the Deceased's death in London and his London address appear on the probate record in the bundle. So even at a common-sense level, the "foreign" element was not hidden from the paper trail.

[67] More importantly, the will itself expressly records that the Deceased was ordinarily residing in London, England, although presently in Laborie at the time of execution. That means the will, on its face, speaks to an English residence connection. If anything, that fact makes it harder to argue that the probate process depended on pretending the Deceased was resident only in Saint Lucia.

[68] Once again, I come back to Article 795. If the Code directs that probate of a notarial will is granted "as of course", then procedural imperfections about domicile (even if shown) do not readily translate into revocation unless they go to something the Court was required to decide as a condition of the grant.

[69] If domicile is not a condition of the grant, then an omission about domicile may be an irregularity, but it is not necessarily a fatal one. Courts do not usually revoke grants for every irregularity. Revocation is a serious step. It disrupts administration. It can prejudice third parties dealing with an executor.

[70] There is also a practical reality in this case. The Claimant's case is not that the will is invalid. If the grant were revoked on a procedural footing alone, what then? The same notarial will would still exist. The Defendant could likely cure any procedural defect and apply again. The dispute would not be resolved. It would be delayed. That is another reason the Court is slow to grant revocation unless the defect is truly fundamental.

[71] On the evidence and pleadings, I do not see a proper basis for revocation grounded in procedure.

DISPOSITION:

[72] The Claimant's case fails at two levels. First, in law, the Civil Code provisions on probate of notarial wills (Articles 794–795) do not make domicile a jurisdictional precondition.

The “as of course” language is strong, and the codal structure supports the Defendant’s interpretation.

[73] Second, even if domicile were jurisdictionally decisive, the Claimant is unable, after the 29 January 2026 Order striking out his and his witness’s statements, to prove UK domicile on the admissible evidence.

[74] That double failure makes revocation unsustainable on the case as pleaded and proved.

ORDER:

[75] Accordingly, and for the reasons above, I make the following orders:

- 1) The Fixed Date Claim filed on 4 April 2024 is dismissed.
- 2) The declarations sought by the Claimant are refused.
- 3) The grant of probate issued on 7 December 2023 in the estate of Ferick Hyde Smith also known as Ferick Smith also known as Hyde Smith remains valid and in full force and effect.
- 4) The Claimant shall pay the Defendant’s prescribed costs of this claim in the sum of \$10,000.00.

Alvin S. Pariagsingh
High Court Judge

By the Court,

Deputy Registrar of the High Court