

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

COMMONWEALTH OF DOMINICA

Claim No.: DOMHCV2024/0126

IN THE MATTER OF SECTION 4(1)(e)(i) OF THE INTESTATES' ESATES ACT CHAP. 9:03 VOLUME 3 OF THE 2017 LAWS OF DOMINICA

IN THE MATTER OF SECTION 4(1)(e)(ii) OF THE INTESTATES' ESATES ACT CHAP. 9:03 VOLUME 3 OF THE 2017 LAWS OF DOMINICA

IN THE MATTER OF THE ACCOUNT AND SEIZURE OF THE PERSONAL RESIDUARY ESTATE OF FERDINA FERNANDA FRAMPTON A.K.A. FERDINA FRAMPTON (DECEASED)

BETWEEN:-

1. ANTHONY FRAMPTON.
2. STEPHEN FRAMPTON
3. PATRICK FRAMPTON
4. LINDON FRAMPTON
5. RICK FRAMPTON
6. FERDREENA BELLOT nee FRAMPTON
7. KURT WAYLAND
8. ESTHER DRIGO

(As Next-of-Kin of FERDINA FERNANDA FRAMPTON, deceased

APPLICANTS

AND

1. LARRY LAZARE
2. NELICA VICTORINE
3. HAZEL BRUNO

RESPONDENTS

Before: The Honourable Justice Zainab Jawara Alami

Appearances:

Ms Jilane-Milani Prevost for the Applicants

Mr Bernard Pacquette for the 1st Respondent

2024: October 11, 14

November 11

RULING

Background

- [1] **JAWARA ALAMI J.:** By an application dated and filed 24th July 2024, the 1st Respondent applies for an Order that the Order dated 8th July 2024 be set aside and the Claim form and all accompanying documents be served on Sage Chambers for and on behalf of the 1 Respondent/Defendant.
- [2] The genesis of this application is that the Claimants by an ex-parte application sought for injunctive reliefs against the 1st Respondent seeking for reliefs that the 1st Respondent/Applicant to account for the real and personal property of the deceased that he took possession of including the deceased's vehicle which he had access to, having lived together with the deceased for some time before her death.
- [3] The Applicant/1st Respondent avers in his affidavit in support that he became aware of the claim against him on 22nd July 2024 and that the signed order dated 8th July 2024 was left with his mother on Wednesday 17th July 2024 at her home at 56 Lime Street, Bath Estate, where he does not live. The Applicant attached and marked the copy of the order as Exhibit "LL-1. An affidavit in reply dated 25th September 2024 was filed by the Claimants responding to the affidavit of the Applicant which failed to respond to the allegations made by the applicant that he was served through his mother. An affidavit in response was also filed by the Applicant dated 8th August 2024.

Reliefs sought

- [4] The Applicant has therefore applied to this Honourable Court to set aside the Court Order dated 8th July 2024 so that the he can be properly served with the claim documents to allow him to prepare a reply to the claim on the following grounds:
1. That the 1st Respondent/ Defendant only became aware of the claim against him on 22nd July 2024;

2. That the 1st Respondent/Defendant has not received the Claim Form or any accompanying documents in respect to their Claim against the 1st Respondent/Defendant;
3. That the 1st Respondent/ Defendant was not properly served with Order dated 8th July 2024;
4. There is no grant of representation from the court pursuant to Civil Procedure Rules (CPR) 2023 Part 21 Rule 21.1;
5. No original process has been filed and served in accordance with CPR 2023 Part 8 Rule 8.1;
6. The service on the 1st Respondent/Defendant is defective and irregular;
7. That the claim is without merit. The Applicants grounds for injunctive relief do not exist and were never advocated by the Applicants.

Issues arising

- [5] Having perused the affidavits and the written submissions filed by the parties, the salient issue arising for determination is as follows:
- i. Whether the Injunction order was properly served on the Applicant?

The Law and analysis

- [6] The applicant argues in his submissions that his service was not proper as he was not given an authorisation code. **Rule 5A.13 (1)** of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023**¹ provides that Consent to service by electronic means is given when a party who furnishes an electronic mail address under **rule 5A.4(2)** consents to accept service by electronic means through the electronic mail address provided.
- [7] From the facts averred in the various affidavits, it is clear that the relationship between the parties had become acrimonious to say the least making it highly impossible that an electronic email address was provided by the applicant. In fact, the Claimants/Respondent had come by way of an Ex-Parte application, without any notice to the Applicant.
- [8] The most salient fact to be considered with regards to issue at hand is the fact that the Applicant has averred in his affidavit in support extensively that, the order of the court was served on his mother.

¹ Hereinafter CPR 2023

- [9] **Rule 17.4(1)(6) of CPR 2023** being the relevant order herein, stipulates the mode of service and conditions for valid service of an interim injunction and stipulates:

*“When an order is made under paragraph (4), the applicant must, not less than 7 days before the date fixed for further consideration of the application, **serve the respondent personally with***

(a) the application for an interim order;

(b) the evidence on affidavit in support of the application;

(c) any interim order made without notice; and

(d) notice of the date and time on which the court will further consider the application”
[emphasis supplied].

- [10] Now, it is an established fact that the Applicant became aware of the order of the court on 22nd July when the return date of the matter was 24th July 2024. The Respondent/claimant acknowledges that service was short and as such the court did not proceed to hear the matter on that day but extended it to the 27th September 2024.

- [11] Apparent also, is the fact that the Applicant was not served personally with the interim order as provided by **rule 17.4(6) of CPR 2023**. I understand that there is some history of the Applicant evading personal service, which may have warranted service through his mother. This ought to have been catalogued by an affidavit of service to that effect in accordance with **rule 6.7 of CPR 2023** that “**if proof of service of any document is required, it may be proved by any method of proving service set out in part 5**” [emphasis supplied].

- [12] Since **rule 17.4(6) of CPR 2023** requires personal service of the Order and all other documents prescribed, **rule 5.3 of CPR 2023** also relevant here, defines personal service and provides that personal service is through handing it or leaving the document with the person to be served. In the final analysis therefore, and in the absence of any affidavit of service to prove evasion of personal service, service of the Applicant through his mother was wrong and amounted to no - service. The law is settled beyond controversy, that where the Rules of court provide for personal service of a process on the defendant, failure to do so is fundamentally defective as it goes to the root of the action. Proceeding otherwise would render all further actions by the court a nullity and would entitle the party not served and against whom the order was made in his absence to have the order set aside.

[13] Griffith J, in **June Turner v William Guy**², reiterated the general principles of setting aside or varying an injunction. She said:

“an injunction granted ‘until further order’ continues until it is expressly or by necessary implication discharged by an order of the court. Further she said that where an interim order is made after an inter-partes hearing on the merits, a court will not entertain an application to set aside that order or part thereof, or make any other order inconsistent with it, unless there has been a material change of circumstances or if there was some relevant misrepresentation or mistake which renders it just to do so”.

[14] Clearly the lack of service of all the documents prescribed under **rule 17.4(6) of CPR 2023** is a mistake on the part of the Claimant/Respondent and the Applicant herein has requested that this Honourable Court set aside the Court Order dated 8th July 2024 so that he can be properly served with the claim documents to allow him to prepare a reply to the claim. The law is such that a party dissatisfied with any order or direction made without a hearing is able to apply to have it set aside, varied or dealt with again (R11.19) and according to the case of **Bank Mellat v Nikpour**³ *“The court can either refuse to discharge an interim remedy despite the applicant’s failure to comply with the above duty or can discharge an order and make another in the same, or substantially the same, terms”.*

Disposition

[15] In the premises therefore, I discharge the order of 8th July 2024, and will make another one substantially in the same terms and include as follows:

1. That the Claimant shall serve the 1st Respondent with;
 - (a) the application for an interim order;
 - (b) the evidence on affidavit in support of the application;
 - (c) the order made without notice; and
 - (d) notice of the date and time on which the court will further consider the application.
2. The arguments shall be made by written briefs of arguments;
3. The matter is adjourned to 18th February 2025 for the hearing of the substantive application for injunction.

² BB 2020 HC 67 (delivered 15 October 2020)

³ [1985] FSR 87, [1982] Com LR

HON. JUSTICE Z. JAWARA-ALAMI

High Court Judge

BY THE COURT

REGISTRAR