

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNIHCV 2021/0028

BETWEEN:

[1] Mabel Venzen

Claimant

and

[1] Hughward Daniel

[2] Amelia Daniel

Defendant

Appearances:

Mr. David Dorsett for the Claimants

Mr. Jean Kelsick for the Defendant

2024: DECEMBER 17

2025 MARCH 31

RULING

COTTLE [AG.]:

- [1] This is the ruling on an application by the Claimants to add a party, as Defendant to the counterclaim, in this matter. The history of this claim is convoluted but counsel for the Defendant neatly encapsulates the salient background and I gratefully adopt his formulation as set out in his written submissions.

[2] Background

- a. These proceedings arise out of a claim for possession of Parcel 25, Block 13/12 St Peter's Registration Section ("13/12/25") filed by the Claimant on 21st November 2021. It is contested by the Defendants, who filed a Defence and Counterclaim on 2nd September 2022. In the latter the Defendants contend that they have a right to occupy parcel 13/12/25 on the basis of proprietary estoppel, an overriding interest, unjust enrichment and a constructive trust.
 - b. On 1st November 2022 the Claimant filed an application to set aside the Defendants' Defence and Counterclaim. The application was denied. On 30th November 2022 the Claimant filed an application to strike out the Defendants' statement of case or part thereof. This application was refused by an order of the court dated 24th July 2023. On 31st July 2023 the Claimant filed a further application, this time to strike out that part of the Defendants' statement of case alleging fraud. By a ruling dated 29th November 2023 the third strike out application was dismissed, and the Claimant was ordered to pay costs.
 - c. On 8th November 2024 the Claimant applied to add the estate of Matthew Kelly as a Defendant to the Counterclaim. The costs which were awarded when the prior application was denied have not yet been paid.
- [3] The application is said to be premised on the provisions of Section 20 of the Supreme Court Act.

The section reads;

"The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act and the Constitution shall in every cause or matter pending before the Court grant, either absolutely or on such terms and conditions as to the Court seems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by him in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided."

- [4] Counsel for the Claimant explains that the Defendants' have counterclaimed seeking
" a declaration that the subject land be rectified to show ownership by the Estate of Matthew Kelly, deceased. Such an order clearly affects the interest of the Estate of Matthew Kelly, deceased, and in the circumstances, it is proper that the Estate of Matthew Kelly, deceased, be added as a Defendant to the counterclaim so that the court can resolve all the matters in dispute in the proceedings."
- [5] The Defendants resist the application on several grounds. Firstly, they point out that the Estate of Matthew Kelly is not a legal person. In **Millicent Bass v Julian Daniel 2017 ECSCR** the High Court ruled as follows at para. 6 of its judgment:
"The established principle that it is essential for Letters of Administration to be obtained prior to the filing of a claim on behalf of the estate of a deceased was recently restated and applied in our jurisdiction by Smith J in Heirs of Camselle St. Catherine v Darius St Catherine et al."
- [6] The necessity for the appointment of a personal representative also applies where it is contemplated to bring any action against the estate of a deceased person.
- [7] It is for this reason that the CPR 2023 at part 21 makes provisions for dealing with matters in which a person who is deceased would be interested had they not died.
- [8] Proceedings against estate of deceased person
21.7 (1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.
(2) A person may be appointed as a representative if that person –
 (a) can fairly and competently conduct proceedings on behalf of the estate, whether or not an application for a grant of representation has been made or is likely to be made; and
 (b) has no interest adverse to that of the estate of the deceased person.
(3) The court may make such an order on or without an application either with the consent of the person to be appointed or on notice to that person where there is no consent.
(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.

(5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

[9] The effect of this rule is that until a representative party has been designated by order of the court a Claimant can take no further action in the claim.

[10] From this reasoning it follows that section 20 of the Supreme Court Act does not avail the Claimants here. The section deals with claims which are properly brought forward. As presently constituted there is no claim properly brought forward which would involve the Estate of Mathew Kelly as a Defendant to the counterclaim. The application for joinder is therefore refused. To grant it simpliciter would be a nullity as the court cannot join a party to the litigation unless that party is a legal person. Until there is a proper representative ad litem appointed the application cannot be granted. I accept that the CPR 2023 contemplates circumstances where a representative party can be appointed without an application. However, there is no material before this court that would enable the court to decide who that representative party could be.

Order

[11] The application to add the Estate of Matthew Kelly as a Defendant to the counterclaim is dismissed. The Claimant will pay to the defendant the costs of this application. Those costs may be agreed by the parties or assessed by the court upon the final determination of this matter.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR