

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA
(CIVIL)
A.D. 2021**

**IN THE MATTER of the Estate of James Withington Hodge also
known as James W. Hodge also called James Wittington Hodge
(deceased)**

and

**IN THE MATTER of the Letters of Administration and Probate
Act, R.S.A. c. L45**

and

**IN THE MATTER of an application for the grant of letters of
administration in the estate of James Withington Hodge also known
as James W. Hodge also called James Wittington Hodge (deceased)
by Rosemary Dawne Hodge-Adams**

CLAIM NO. AXAHCV 2021/0027

BETWEEN:

ROSEMARY DAWNE HODGE-ADAMS

Applicant

and

THE REGISTRAR OF THE HIGH COURT

Respondent

Before: His Lordship, the Honourable Justice Shawn Innocent

Appearances:

Mr. Thomas W.R. Astaphan QC, with him Ms. Tona Simpson-Whyte of counsel for
the Applicant

Mr. Ivor Greene, Senior Crown Counsel Attorney General's Chambers of counsel
for the Respondent

2021: July 21; 23; 29;
August 4.

[1] **INNOCENT, J.:** This matter came up on an application for leave to apply for judicial review against the Registrar of the High Court (the 'Registrar') wherein the Applicant sought the following substantive relief:

- (1) A declaration that the Registrar is obliged to follow the procedure and process mandated by section 2(3) of the Letters of Administration and Probate Act (the 'Act') with respect to the application for the grant of letters of administration made by the Applicant on 22nd March 2021; and in particular, to fill up such papers as may be necessary to lead to the grant of letters of administration; and
 - (2) A writ of mandamus directing the Registrar to carry out the duties mandated by section 2(3) of the Act.
- [2] The matter initially came before the Court on an ex parte hearing. At the ex parte hearing, the Court observed that the leave application itself had the tendency to grant the Applicant immediate interim relief. Therefore, in accordance with CPR 56.4(3) the Court ordered that the Attorney General be served with the notice of application for leave to apply for judicial review. At the inter partes hearing, Senior Crown Counsel Mr. Ivor Greene appearing for the Honourable Attorney General indicated that the Attorney General had no objection to the grant of leave to the Applicant and in fact conceded the points raised by the Applicant in the application.
- [3] Given the posture of the Attorney General towards the proceedings, the Court, after hearing the arguments of counsel appearing for the Applicant treated the application for leave as the hearing of the substantive claim for judicial review. The Court also adopted the view that the issues raised in the proceedings raised important issues in relation to the practice and procedure in non-contentious probate proceedings that required closer examination and clarification. This is now particularly the case since the advent of the guidance given for the filing of probate applications on the E-litigation Portal. It is for this reason that the Court reserved its decision on the present application.
- [4] The application for leave arose within the following factual context. It is unfortunate that the Court did not have before it the factual contentions of the Respondent in relation to the issues that arise for determination. However, it appears that there may very well not be the necessity to rely on the factual contentions of any party as it appears that the issues concerned are merely procedural and require a determination of whether in fact the correct procedure was followed in respect of the

Act, the Non-contentious Probate Rules and the Guidance under the E-litigation Portal. In any event, the Attorney General accepted the facts as presented by the Applicant in support of the application.

- [5] The Applicant is the daughter of the deceased and was therefore by virtue of the section 2(i) of the Act one of the persons entitled to apply for a grant of letters of administration in the estate of the deceased.
- [6] On 22nd March 2021, the Applicant attended at the Registry of the High Court (the 'Court Office') and made a request for an application for the grant of letters of administration in her deceased father's estate be made on her behalf.
- [7] It appears, according the applicant's case, that between 22nd March 2021 and 1st April 2021, at the request of the Court Office, she provided the Court Office with the necessary documents to process the application for the grant of letters of administration.
- [8] On 1st April 2021 the Applicant attended at the Court Office and paid the sum of EC\$100.00 in respect of Land Registry fees.
- [9] On 8th April 2021, the Applicant received communication from an officer at the Court Office, with whom she had previously dealt with in respect of the application for the grant, who informed her that the documents required to be filed in respect of the grant had been prepared and were ready to be filed but required her signature. On even date, the Applicant attended at the Court Office in the company of her surety and duly signed the documents presented to her by the officer to lead to the grant.
- [10] On even date, the Applicant also paid the sum of EC\$10,814.62 in respect of Judicial Estate Administration Fees; the sum of EC\$20.00 in respect of Judicial Fee; and the sum of EC\$1,892.00 in respect of filing fees for the E-litigation Portal. Therefore, it appears that the Applicant had paid in full all the necessary fees in respect of the filing of the application for the grant.

- [11] After having completed the procedure mentioned above, the Applicant was informed by an officer of the Court Office that the final step in the process was the advertisement of the notice of the application for the grant in the Gazette.
- [12] On 17th June 2021 the Applicant communicated with the Manager of the Court Office who informed her that the application for the grant had not been filed, or more appropriately, uploaded onto the E-litigation Portal. In addition, the Applicant was informed that on the previous day the Applicant's brother had filed an application for a grant in the same estate on the E-litigation Portal through the medium of his legal practitioner.
- [13] In an email dated 17th June 2021 the Court Office Manager wrote to the Applicant by email in the following terms:
- “While you would have signed some of the documents required, the application was not completed.
The requisite fees (EC\$1892.00) for filing all the documents for the matter were paid in full, even though all of the documents were not prepared.
It was anticipated that these documents ... would be prepared subsequent to your return to Anguilla.
You also paid estate fees in the sum of EC\$10,814.62. We received the consent from your sister Cheryl Hodge.
Your other siblings did not attend the office to sign their consent.
The documents signed have not been filed.
Yesterday, 16th June 2021, an application for Letters of Administration in your father's estate was filed by your sibling.
Initially it appeared that this was a non-contentious matter which would allow the Court Registry to assist with the preparation of the documents.
However, with yesterday's filing it appears that this matter may be contentious and thus the Court Registry can no longer assist.
Perhaps you should seek legal advice.
The sums you paid will be refunded.”
- [14] It was on the foregoing basis that the Applicant contended that the Respondent had either failed to carry out her duties as mandated by sections 2(1) and 2(3) of the Act or had misapprehended her duties thereunder to the Applicant's detriment.
- [15] Mr. Thomas Astaphan QC appearing for the Applicant, contended that when the Applicant began the process of applying for the grant, and up until 16th June 2021,

there was no basis upon which the Applicant's application for the grant could have been properly considered as being contentious in nature.

- [16] In addition, Mr. Astaphan QC submitted that the Act mandated that the Court Office assist with the preparation of the documents to lead to the grant; and that it was the duty of the Registrar to whom an application is made in a non-contentious probate matter to fill up such papers as may be necessary to lead to the grant of letters of administration and for that purpose require the applicant to furnish such particulars and proof as the Registrar may consider necessary; and if after investigation the Registrar is satisfied that the application ought to be granted the Registrar shall direct accordingly.
- [17] According to Mr. Astaphan QC, the Act mandates that the Registrar does all that is necessary to process the application, including processing and filing the necessary paperwork.
- [18] At the hearing of the application, the Court informed Mr. Astaphan QC that certain matters regarding the subsequent application filed by the Applicant's brother had come to the Court's attention. These matters included the fact that on 21st June 2021 the Applicant filed a caveat staying any grant in the estate of the deceased to the Applicant's brother; on 25th June 2021 the Applicant's brother filed a warning to caveator; and that it appears that there has been no service of the warning on the caveator. Accordingly, it did not appear that any action was taken by the Applicant by way of filing an Acknowledgement of Service or filing of an application for directions before the Registrar.
- [19] In essence, Mr. Astaphan QC's submission was that at the time that the Court Office commenced processing the subsequent application for the grant of letters of administration, they had proper notice of the Applicant's previous application. Therefore, it was incumbent on the Court Office or the Registrar to inform the party making the subsequent application that a previous application had been filed and not to seemingly discard the Applicant's application and proceed with the second application. This practice Mr. Astaphan QC submitted was procedurally incorrect,

arbitrary and an improper application of practice and procedure that ought to have been followed in such a case. According to Mr. Astaphan QC, the Applicant's application having been filed first in time ought to have been proceeded with leaving it up to the second applicant to have engaged whatever process provided by the Rules which they desired.

- [20] Section 2(1) of the Act provides that in any case where a person dies intestate, an application may be made to the Registrar by the husband, wife, issue, father, mother, or issue of the father or mother of the deceased person for grant of letters of administration in respect of the deceased's estate.
- [21] Section 2(3) of the Act mandates that it shall be the duty of the Registrar to whom application is made in any non-contentious matter at the request of the applicant to fill up such papers as may be necessary to lead to the grant of letters of administration or of probate, as the case may be, and, for the purpose, he may require the applicant to furnish him with such particulars and proof as he may consider necessary; and if after investigation of the application the Registrar is satisfied that the application ought to be granted, he shall direct accordingly.
- [22] To that extent, these provisions of the Act mandate that the Registrar on being presented with an application for a grant of letters of administration must consider the application on its merits; and upon being satisfied that the grant can be made to issue the grant.
- [23] The provisions of the Act are supplemented by the provisions of the Eastern Caribbean Supreme Court (Non-Contentious) Probate and Administration Rules (the 'Rules'). A further gloss on the probate practice and procedure has been added by the advent of the E-litigation Portal.
- [24] Section 4 of the Rules provide that an application for a grant of probate or letters of administration shall be made to the registrar of the court and shall be filed at the registry where all caveats, warnings, citations, acknowledgements of service and notices of application under these Rules shall be filed.

- [25] Section 5(l)(c) of the Rules provide that an application for a grant of probate or letters of administration may be made by a proposed administrator in person as was done in the Applicant in the present case.
- [26] In the case of what is described as a Pro Se litigant in the Guidelines, it is the duty of the E-litigation Manager to ensure that an unrepresented person submitting documents for filing pay the appropriate fees and upload the application to the portal.
- [27] Section 11 of the Rules set out the documents to be filed on making an application for the grant of letters of administration. Section 57 of the Rules sets out the duty of the court on receiving an application for the grant of letters of administration and provides that:
- “(1) A grant of probate or letters of administration shall not be made until the application has been published for two successive weeks in a newspaper circulating in Anguilla, and thereafter, not until the expiration of a further 7 days from the date of the last publication, unless the court otherwise directs.
- (2) The court shall not issue a grant until all inquiries which it may see fit to make have been satisfactorily answered.”
- [28] The procedure for filing probate matters on the E-litigation Portal are set out at paragraph 24.0 in the Eastern Caribbean Supreme Court E-litigation Portal Guidelines Document which provides that:
- “24.1 When a Form P15 or an application is filed for a Probate matter, a claim number is issued via the Portal.
- 24.2 After the documents are filed into the Portal, the Probate’s Case Manager is to review the application and other documents submitted for compliance with: (i) Relevant filing fees, (ii) Submission of relevant forms, and (iii) Submission of relevant supporting documents.
- 24.3 Once all the required documents have been filed and the matter is ready for the Registrar to hear the matter, the Probate’s Case Manager will bring the matter to the attention of the Registrar / Judicial Officer.
- 24.4 After the matter is brought to the attention of the Registrar / Judicial Officer, the Probate’s Case Manager then sets a date for the hearing of the application which is in keeping with the timelines which are established by the Registrar / Judicial Officer in their Member State or Territory.

24.5 If upon hearing the matter the Registrar or Judicial Officer raises any queries these will be brought to the attention of the Probate's Case Manager so they can be dealt with appropriately.

24.6 Upon satisfaction of all queries, the matter is then set for another hearing, and once the Registrar / Judicial Officer is satisfied that all the requirements have been complied with, the parties would be instructed to advertise."

- [29] Having considered the provisions of the Act, the Rules and the E-litigation Portal Guidelines, the Court has formed the view that it is readily apparent that the appropriate practice and procedure was not followed by the Court Office in the instant case.
- [30] First of all, given the relevant facts, there seems to be no or no reasonable explanation why the Applicant's application was not uploaded onto the E-litigation Portal at the time she signed the relevant documents to lead to the grant and the payment of the appropriate court fees and filing fees.
- [31] The fact that there was another party interested in obtaining a grant in the same estate was no business of the Court Office or that of the Registrar. Had the appropriate action been taken by the Court Office and the Registrar in accordance with the Act, the Rules and the Guidelines, the question of there being the likelihood of the matter being contentious would not have arisen. Notwithstanding, the alleged apprehension of the court officer or court officers concerning the other party's interest in the estate, it becomes inexplicable why the interested party's attorney at law filed an application for a grant of letters of administration in the same estate while the Court Office had notice of the preceding application which was in their possession.
- [32] What is even more seemingly odd is that the interested party filed along with their application for the grant of letters of administration a document purporting to be a "Certificate of Search" not issued by the Court Office but signed by one of the employees or agents of the law firm to which the interested party's legal practitioner belonged. The purported "Certificate of Search" certifying that she having conducted a search of the Probate Registry at the High Court of Justice, Anguilla on 16th June

2021, incidentally the same day the second application was filed, her search revealed that no other grant had been issued, no application for a grant has been made and no caveats filed in respect of the estate.

[33] This is astonishing for two reasons. Firstly, it is not in keeping with the practice and procedure set out in the Rules or the Guidelines. Secondly, at the time that the second application was filed the Court Office already had notice of the Applicant's preceding pending application. The Certificate of Search must be issued by the Court Office and not by the legal practitioner or person making the application. Therefore, the "Certificate of Search" signed by the legal practitioner's clerk was irregular in all the circumstances of the case.

[34] In summary, when a person such as the Applicant in this case, presents an application for the grant of letters of administration, it is for the Registrar or the appropriate designated officer at the Court Office to fill up such papers as necessary to lead to the grant and have the same uploaded onto the E-litigation Portal. In the event that there are any queries after this process has been completed it is for the Registrar to refer these queries to the designated officer (the Probates Case Manager) for appropriate action. This is the procedure set out at paragraph 24.0 of the Guidelines which clearly were not adhered to in the present case. It is not for the Probates Case Manager or the Registrar to seemingly halt the process initially commenced and defer the same on the basis of a subsequent application having been filed on the E-litigation Portal by another person entitled to a grant.

[35] The debacle that occurred was clearly attributable no fault on the part of the Applicant. It was the fault of the Probates Case Manager. Therefore, the subsequent application for the grant of letters of administration not having been sealed by the Court means that there is presently no grant made in the estate of the deceased. In the circumstances, the Court would therefore direct that the Applicant's application for the grant of letters of administration be processed immediately upon the making of the Court's ruling herein the same having been presented first in time. Also, the fact that the Applicant has filed a caveat in the subsequent application simply means

that the matter will have to follow its procedural course as mandated by the Rules. However, no grant can be issued in respect of this subsequent application. It will be left up to the subsequent applicant to determine what course of action they will take in light of the Court's ruling.

[36] In the circumstances, the Court's order is that:

1. The Probates Case Manager shall forthwith follow the procedure set out at paragraph 24.0 of the Guidelines by uploading the Applicant's grant of letters of administration on the E-litigation Portal.
2. The Registrar of the High Court is directed to take all necessary steps to lead to the grant of letters of administration in the estate of the deceased. The Registrar of the High Court shall immediately, while processing the application direct all and any queries related to the said application to the Probates Case Manager for their immediate attention and action.
3. For the avoidance of doubt the practice and procedure set out at paragraph 24.0 of the Guidelines shall be adhered to.
4. There shall be no order as to costs.

Shawn Innocent
High Court Judge

By the Court

Registrar