

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHPB2022/0031

In the Estate of **REGINALD SINCLAIR
LAPSLEY**, late of Westbourne Ghaut,
Basseterre, St. Kitts

Appearances:

Ms. Talibah Byron for David Sinclair Lapsley
Mr. O’Grenville Browne for Brenda Lapsley-Foreman

2023: February 3;
February 20.

DECISION

- [1] **GILL, J.:** The application before the court seeks to strike out an application for revocation of a grant of letters of administration.

Background facts

- [2] Reginald Sinclair Lapsley of Basseterre, St. Kitts, died intestate on 7th May 2010 in Birmingham, United Kingdom. At the time of his passing, he had two adult children, David Lapsley and Brenda Lapsley-Foreman, both of Birmingham, United Kingdom.
- [3] In the year 2020, David Lapsley (“Mr. Lapsley”) applied for and was granted letters of administration in his late father’s estate. The grant was issued on 30th October 2020.
- [4] On 4th April 2022, his sister Brenda Lapsley-Foreman (“Mrs. Lapsley-Foreman”), filed an application for revocation of the said grant (“the revocation application”).

- [5] On 13th January 2023, Mr. Lapsley filed an application to strike out the revocation application.

Mr. Lapsley's submissions

- [6] Mr. Lapsley submits that the revocation application is fatally flawed. He contends that actions seeking the revocation of a grant of letters of administration are clearly classified as probate claims and as such, must be begun by a fixed date claim form and not by way of a Form 6 application. He explains that a Form 6 application is not a means of originating process and the non-compliance with proper originating process is fatal.

Mrs. Lapsley-Foreman's submissions

- [7] Mrs. Lapsley-Foreman argues that her application is not a contentious probate matter despite it being titled 'application for revocation of a grant'. She submits that her application seeks simply to amend or revoke the existing letters of administration for letters of administration granted to both parties who are equally entitled to the estate of Reginald Sinclair Lapsley. She is merely requesting that she be added as a joint administrator. Mrs. Lapsley-Foreman, in her written submissions, states that this discretion should be exercised on the basis that the existing grant was made without her consent and without notice to her and therefore, this error must be corrected.

Issue

- [8] The court must determine whether to strike out the application for revocation of the grant of letters of administration issued to Mr. Lapsley.

Law and analysis

- [9] Rule 68.1(2) of the Civil Procedure Rules 2000 as amended (CPR 2000) defines 'probate claim' as "a claim for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being a claim which is non-contentious or common form probate business...".

[10] CPR 68.2(1) provides that probate proceedings must be begun by issuing a fixed date claim in Form 2.

[11] Learned counsel for Mrs. Lapsley-Foreman, Ms. Byron, recognises that in many instances, the court has deemed cases properly filed where they were instituted by the wrong originating process, for example, where they were instituted by way of a claim form instead of a fixed date claim or vice versa. However, Ms. Byron submits that the court is prevented from deeming a case properly filed where neither of the originating processes has been used at all. Counsel points out that there are no pleadings before the court at all, no document verified by a certificate of truth or sealed by the court as claim forms and fixed date claim forms are, and none of the required particulars which would ordinarily be contained in pleadings is present.

[12] Ms. Byron further submits that the parties cannot agree to waive non-compliance with the proper originating process. In **Steele Douglas v Pinneys Investment Company Limited**,¹ Rawlins J, as he then was, stated:

“At the conclusion of the hearing on the 11th day of December 2001, I indicated to all of the Parties that my first concern was the method by which the Application was instituted. **The case was commenced by way of Notice of Application in Form 6 under Part 11 of CPR 2000. However, Part 8 of the CPR provides two (2) methods for the commencement of civil cases, which fall under the ambit of these Rules. One is by way of Claim Form. The other is by way of Fixed Date Claim Form.** Part 8 provides only two (2) exceptions. Thus, Part 8.1(6) of CPR 2000 provides for Form 6 to be the first process only where a remedy is sought prior to the commencement of proceedings or in respect of a matter in proceedings commenced in another jurisdiction.”

[13] At paragraph 22 of the judgment, Rawlins J went on:

“At the conclusion of the hearing of the Application on the 11th day of December 2001, I had informed Mr. Butler of my intention to dismiss the Application for failure to conform with the requirements for the commencement of proceedings under Part 8 of CPR 2000. I have noted that Solicitors and Counsel for the Respondent Company were willing to waive this requirement. **It is my view, however, that this is a strict requirement. In their wisdom, the framers of CPR 2000 provided an**

¹ NEVHCV 2001/0101 at paragraph 18, applied in *In the Estate of Kantilal Karsansas Chohan* BVIHCV2008/0024 (concerning an application to prove a lost will)

originating procedure that is intended to facilitate a detailed pleading process and the subsequent ventilation of those matters subject to a proper evidential process including cross-examination. This, in my view, is particularly helpful in caveat proceedings. Non-compliance with the originating process is fatal, particularly in cases such as this.”

- [14] Ms. Byron also submits that the revocation application failed to comply with the requirement to make Mr. Lapsley, the administrator of the deceased’s estate, a party to these proceedings. To date, there has been no application or order to make Mr. Lapsley a party to this action. He was served with the application only after the court so directed. CPR 68.2(3) reads:

Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of the deceased person’s will or letters of administration of the estate must be made a party to any proceedings for revocation of the grant.

- [15] Learned counsel for Mrs. Lapsley-Foreman, Mr. Browne, in his contention that her application is not a contentious probate matter, submits that CPR 2000 does not provide any guidance where one seeks to be added as a joint administrator and therefore, it means that one has to consider the rules used in the High Court of Justice from which guidance can be sought.² Mr. Browne directs the court’s attention to Rule 41 of the UK Non-Contentious Rules 1987 which provides that if a registrar is satisfied that a grant should be amended or revoked, the registrar may make an order accordingly. The rule goes on to provide that except on the application or with the consent of the person to whom the grant was made, this power should be exercised only in exceptional circumstances.

- [16] There is no dispute that Mr. Lapsley and Mrs. Lapsley-Foreman are siblings and the only descendants of Reginald Sinclair Lapsley and therefore both equally entitled to his estate. Mr. Browne is adamant that if Mr. Lapsley wanted to make a sole application for the grant of letters of administration, he was required to obtain the consent of Mrs. Lapsley-Foreman to permit him to do so. Further, no notice of the

² See section 11 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act. Cap. 3.11 of the Laws of Saint Christopher and Nevis

application for the grant was given to Mrs. Lapsley-Foreman so that the grant of letters of administration was made not in conformity with the rules.

[17] In my view, contrary to Counsel's submission, there is no need to seek guidance from the UK position as there are rules in this jurisdiction governing non-contentious probate and administration matters, including the amendment and revocation of a grant.

[18] Rule 25 of the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules 2017 for Saint Christopher and Nevis³ ("the non-contentious rules") under the rubric 'Notices and consents' provides:

(1) *Subject to paragraph (2), a grant of letters of administration may be made to a person entitled to it without the consent of any other person entitled in the same degree.*

(2) *Where, a person equally entitled to a grant of letters of administration, has not consented to the grant being made to the person equally entitled thereto, the applicant for the grant shall give not less than 14 days' notice to each other person entitled in the same degree before applying for the grant unless the court dispenses with the need for such notice.*

[19] By this provision, Mr. Lapsley was not required to obtain Mrs. Lapsley-Foreman's consent to apply for the grant of letters of administration in their father's estate, but he had to notify her before so applying unless the court determined that there was no such need.

[20] Mrs. Lapsley-Foreman maintains that her application is a simple non-contentious application, and the court should grant the revocation order in the interests of justice.

[21] Rule 31 of the non-contentious rules makes provision for amendment and revocation of a grant. I set out Rules 31(4) and (5) as follows:

(4) *An application for revocation of a grant shall be in Form P19 and filed at the registry together with –*

(a) *An affidavit setting out –*

(i) *details of the first grant;*

³ Saint Christopher and Nevis Statutory Rules and Orders, No. 20 of 2017

- (ii) *the grounds on which the revocation is sought;*
and
- (iii) *the entitlement of the applicant to a new grant;*
- (b) *where the original grantee has become incapacitated or died,*
a medical certificate or other evidence of incapacity or the
death certificate of the original grantee, as the case may be;
and
- (c) *the grant.*

(5) The court may require that a person who applies for an amendment or for revocation of a grant give notice to any person who may be affected.

[22] Mrs. Lapsley-Foreman's revocation application is in Form P19 of the non-contentious rules. "Court" in this context refers to the Registrar of the High Court as stated in the Form. In exact conformity with Form P19, Mrs. Lapsley-Foreman's application reads:

*APPLICATION is hereby made to the Registrar by **BRENDA LAPSLEY-FOREMAN** of Birmingham, England for revocation of a grant issued on the 30th day of October 2020 for Letters of Administration to the Applicant who is the son of the deceased, the deceased having died intestate on the 7th day of May 2010.*

Dated the 4th day of April 2022.

[23] The revocation application is not in Form 6 of CPR 2000 as concluded by Mr. Lapsley. That the revocation application was begun by way of a Form 6 application, is an incorrect statement. Clearly, Mrs. Lapsley-Foreman's application is not intended to be a claim pursuant to Part 68 of CPR 2000, and there was no need to comply with the provisions under that Part as they do not apply. Moreover, CPR 2000 does not apply to non-contentious matters under the non-contentious rules.⁴

[24] It is unclear why this matter was set for hearing before a judge. In my respectful view, the revocation application, being filed in conformity with the non-contentious rules, is for determination by the learned registrar. It is for the registrar to decide whether it is appropriate to do so, including a consideration of whether Mrs. Lapsley-Foreman has satisfied the requirements and provided the necessary evidence for

⁴ Ibid, Rule 3

the revocation. There is no basis for this Court to usurp the function of the registrar in this matter.

[25] Accordingly, I will remit the revocation application to the learned registrar for determination. Therefore, Mr. Lapsley's application to strike out the revocation application must be dismissed.

Order

[26] Based on the foregoing, it is hereby ordered as follows:

- 1) The application to strike out the application for revocation of a grant is dismissed.
- 2) The application for revocation of a grant is remitted to the Registrar of the High Court for determination.
- 3) Mr. Lapsley shall pay Mrs. Lapsley-Foreman's costs of the application to strike in the sum of \$750.00.

Tamara Gill
High Court Judge

By the Court

Registrar