

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2016/0288

BETWEEN:

**SHIRLEY LIDDIE
EDWIN LIDDY**

Claimants

And

**[1] EARL GARFIELD JEFFERS
(Administrator of the Estate of Winston Liddie
And lawful Attorney for Miguel Shane Xavier Liddie)
[2] YVETTE PATRICIA COOLIER LIDDIE
[3] REGISTRAR OF BIRTHS DEATHS AND MARRIAGES
[4] ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS**

Defendants

Appearances:-

Ms. Marsha Henderson and Ms. Britney Jeffers, for the Claimants.

Mr. Terence Byron for the 1st Defendant.

Ms. Eshe Hendrickson-Johnson, Crown Counsel, for the 3rd Defendant.

2022: May, 25
August 04.

JUDGMENT

- [1] **WARD, J.:** The claimants are both siblings of the whole blood of the deceased, Winston Liddie. The 1st named defendant, Earl Jeffers, ("Mr. Jeffers") is the administrator of the estate of the deceased, having obtained a Grant of Letters of Administration of the estate of Winston Adolphus Liddie as lawful Attorney for Miguel Shane Xavier Liddie, ("Miguel Liddie or "Miguel Woods") son and next of

kin of the deceased on 29th May 2013. He is the uncle of Miguel Liddie. The second named defendant is the wife of the deceased.

- [2] On 31st October 2017, the claimants filed an amended fixed date claim form seeking: (i) a declaration revoking (sic) the registration by the Registrar of Births of Winston Adolphus Liddie as the lawful father of Miguel Shane Xavier Liddie and further ordering the Registrar-General of Births, Marriages to correct the Register accordingly; (ii) a declaration that the Grant of Letters of Administration granted to the 1st defendant be revoked.

The pleaded cases

- [3] The claimants' pleaded case is that Mrs. Patricia Liddie was married to the deceased on 29th March 1986 but that subsequently, "it became apparent that the said marriage may not have been lawful as the 2nd named defendant was still by law married to another person which marriage had not yet been dissolved by any court." The claimants therefore pleaded that the deceased died leaving no spouse, no issue nor parent who was entitled to share in the estate and that there are no living siblings of the deceased entitled to benefit in the estate of the deceased save for the two claimants.
- [4] They challenge the grant to Mr. Jeffers on the basis that Miguel Liddie is not the son of the deceased, and that the deceased's name was improperly inserted into his birth certificate as his lawful father by the Registrar of Births. The claimants contend that in so doing, the Registrar failed to comply with the requirements of section 6 of the Status of Children Act, Cap. 12:14 whereby before the Registrar-General could insert the name of the deceased as father there must have been an instrument signed by the alleged mother and the person acknowledging that he is the father of the child. The baptismal certificate upon which the Registrar purported to act was not a document signed by the deceased acknowledging paternity. They therefore seek the revocation of the registration of the deceased as the lawful father of Miguel and correction of the register accordingly and revocation of the Grant of Letters of Administration to Mr. Jeffers.
- [5] By way of defence, the 1st defendant denies that the deceased died leaving no issue. They contend that he was adjudged to be the father of Miguel Liddie, on whose behalf and for the benefit of whom Mr. Jeffers was appointed administrator of the estate of the deceased, limited until such time as Miguel Liddie shall apply to be administrator. Such paternity was established by Order in the Magistrate's Court on 14th January 1976 in Case Number B300/75. By reason of the entitlement of

Miguel Liddie to share in the estate of the deceased, the claimants, being of lower degree, are not entitled to benefit in the estate.

- [6] The 1st defendant further pleads that the court lacks jurisdiction to make an order revoking the registration of the deceased as the father of Miguel Liddie as the power to amend the Register of Births is reserved exclusively by statute to the Registrar-General of Births, Deaths and Marriages. As such, revocation of the grant to Mr. Jeffers would also be in excess of jurisdiction as it would be predicated on revocation of the registration of the deceased as the lawful father of Miguel Liddie.

The evidence

- [7] At trial, the witness statements of Patricia Peetes and Shirley Liddie for the claimants were admitted as their evidence-in-chief without objection. Neither was cross-examined. Edwin Liddy died before trial. The witness statements of Mr. Jeffers and Dr. Hazel Laws were also admitted as their evidence-in-chief without objection. Neither witness was cross-examined. This course of action was mutually agreed between the parties, who considered that the case turned on legal issues. The 2nd defendant did not enter an appearance.
- [8] In summary, the claimants' evidence according to the witness statements both Ms. Liddie and Ms. Peets is that the 2nd defendant was married to the deceased and remained married to him up to the time of his death and that she had waived her interest and/or entitlement to apply and/or benefit in the estate of the deceased and has further consented to the claimants' making application for letters of administration in the estate. At the time of his death, the deceased died leaving no children and they were never aware he had fathered any children and in particular, had never in his lifetime acknowledged Miguel Woods Liddie as his son.
- [9] The defendant's evidence is that the deceased and Beulah Woods, sister of Mr. Jeffers, were involved in a long and amorous relationship, to the knowledge of the claimants and Ms. Peetes. She bore the deceased a son, Miguel Liddie and he was adjudged to be Miguel's father in court proceedings in the Magistrate's Court in 1976. When the child was to be baptised, the deceased was then studying in England. In order to have his name endorsed on the baptismal certificate as the father of Miguel Liddie, he was required to, and did send, a signed document signifying his consent. Registrar-General of Births, Deaths and Marriages, Dr. Hazel Laws' evidence is that on 13th February 2013, an application was made to her to insert the deceased's name as father on the birth certificate

of Miguel Shane Xavier Woods. The application was supported by an affidavit of the said Miguel Woods, his birth certificate, a Baptismal Certificate issued by the Immaculate Conception Co-Cathedral and the deceased's death certificate. She granted the application based largely on the Baptismal Certificate. The 1st defendant's case is that this Baptismal Certificate merely confirms paternity, which has been established by the Court order.

Issues

- [10] The parties agree that the issues for resolution are: (i) whether the claimants have locus standi to bring the claim in the absence of any evidence that the purported spouse of the deceased has renounced her prior right (ii) whether the court has jurisdiction to direct the Registrar-General of Births, Deaths and Marriages to amend the Register of Births in a case such as this where no public law remedies are sought. The claimants subsequently conceded this second issue and further conceded that the order seeking revocation of the Grant of Letters of Administration depends entirely on the success of the revocation of the registration of the deceased as lawful father of Miguel and the rectification of the Register of Births accordingly.

The defendants' submissions on locus standi

- [11] On behalf of the 1st defendant, learned counsel, Mr. Terence V. Byron, submitted that contrary to the claimants' pleadings that the deceased died without leaving a spouse, their witnesses both say at paragraph four of their respective statements that the 2nd defendant was married to the deceased and remained married to him up to the time of his death and that she had waived her interest and/or entitlement to apply and/or benefit in the estate of the deceased and has further consented to the claimants making application for letters of administration in the estate. Accordingly, submitted Mr. Byron, this implies that the claimants recognise that the interest of the surviving spouse was required to be cleared off to permit them to bring the claim. Mr. Byron submitted that there has been no proper renunciation or consent by the 2nd defendant. Mr. Byron submitted that renunciation is a formal act in writing whereby a person having a right to probate or administration waives and abandons that right. It must be witnessed by a disinterested party and filed in the probate registry. Mr. Byron further submitted that any purported consent by the 2nd defendant had to be preceded by formal renunciation which has not occurred. As such, the claimants lack standing to bring the claim. Further, they cannot satisfy or comply with CPR 68.8 (2) which requires them to show in their pleadings that if the

allegations made in their Statement of Claim are true, they would be entitled to an interest in the Estate of the deceased.

- [12] On behalf of the claimants, learned counsel Ms. Marsha Henderson, disagreed with the argument that the claimants lack standing to bring the claim. She submitted that though they may not be the first entitled to apply for a grant of letters of administration, as persons having a beneficial interest in the estate, they can seek a declaration that the grant to Mr. Jeffers should be revoked. Ms. Henderson relies on **Derek Hazel Garvey v Michelle Adrian**¹ in support of this argument.
- [13] In response to the argument that the claimants must clear off the surviving spouse, Ms. Henderson argues that the marriage certificate tendered into evidence establishes that the 2nd defendant was lawfully married to the deceased, and this has not been challenged or refuted by the defendant. Ms. Henderson accepted that based on the Intestacy Act, the surviving spouse would have been first entitled to apply for a grant of letters of administration. However, Ms. Henderson argues that there is no need for the claimants to have cleared her off as they do not seek a grant of letters of administration at this stage; they merely seek the previously mentioned declarations.

Discussion - Locus standi

- [14] In a case of intestacy, Rule 22 of the Non-Contentious Probate Rules sets out the order of priority for the Grant of Letters of Administration. There is no dispute here that if the deceased dies leaving no spouse, no children and no parents, his siblings of the whole blood would be next entitled to apply. The issue joined here, however, is whether the claimants are entitled to bring this claim to revoke the registration of the deceased as lawful father of Miguel Liddie and the grant of letters of administration made to Mr. Jeffers. The latter claim is a probate claim within the meaning of the Civil Procedure Rules 2000 (CPR), rule 68.1(2). Rule 68.3 stipulates the persons who must be made parties to such a claim, namely, 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. CPR 68.8(2) further states:

“In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show

¹ SKBHCV2013/0009.

in that party's statement of case that if the allegations made therein are proved he or she would be entitled to an interest in the estate."

- [15] In the context of this case, Rule 68.8 (2) requires that the claimants' pleadings show they would be entitled to an interest in the estate if what is pleaded is proved. That is the bar they must meet. This requires an assessment of their Statement of Case.
- [16] The claimants' pleadings say that the deceased died leaving no spouse, because the 2nd defendant's marriage to the deceased may not have been lawful as she was still lawfully married to another person which had not yet been dissolved by any court. They further say that the deceased left no issue parent entitled to share in the estate and that there are no living siblings of the deceased entitled to benefit in the estate of the deceased, save for the two claimants (one of whom has since died). If proved, they would be entitled to an interest in the deceased's estate.
- [17] In this case the evidence of the claimants' witnesses flatly contradicts the pleadings, as their witness statements vouch for the validity of the marriage between the 2nd defendant and the deceased, and further claim that the 2nd defendant gave her consent to them to apply for letters of administration. However, the focus of rule 68.8 (2) is on the Statement of Case, which must be proved. The statement of case has not been proved as the evidence before the court is that the 2nd defendant is the lawful wife of the deceased. Furthermore, there is prima facie evidence, not rebutted, that the deceased died leaving issue, namely Miguel Liddie. The Order of the Magistrates' Court in 1976 is prima facie evidence of this fact, pursuant to section 6 (3) of the Status of Children Act, which provides:
- "An order made under section 124 of the Magistrate's Code of Procedure Act, Cap. 3.17 shall be prima facie evidence of paternity in any subsequent proceedings, whether or not between the same parties."
- [18] Under the Intestates Estates Act, Cap. 12.06, the 2nd defendant and Miguel Liddie would both be entitled to an interest in the deceased's estate in accordance with section 4 (1) (a) (ii) of the said Act. Rule 27 of the Non-contentious Probate Rules provides that a surviving spouse shall not be regarded as a person in whom the Estate has vested absolutely unless she would be entitled to the whole estate. The 2nd defendant, not being a person in whom the whole of the deceased's estate vested absolutely, could not purport to renounce her right to the grant and consent to administration being

granted to the claimants, and, in any event, there is no evidence of a formal renunciation before the court, as Mr. Byron has correctly argued. For these reasons, I hold that the claimants have no locus standi to bring the claim. This is sufficient to dispose of the claim.

- [19] However, I will go on to consider the position on the footing that it could be said that the claimants had locus standi to bring the claim. For the reasons that follow, they fail on the jurisdiction issue also.

The jurisdiction issue

- [20] The question under consideration is whether the court can direct the Registrar-General to revoke the registration of Winston Adolphus Liddie as the lawful father of Miguel Shane Xavier Liddie, and order the Registrar-General to correct the Register of Births accordingly. The claimants have conceded that the court does not have the jurisdiction to do so. Nonetheless, Ms. Henderson submitted that the court has jurisdiction to make declarations that the Registrar acted ultra vires the Status of Children Act in purporting to register the deceased as the lawful father of Miguel. This is because she relied on a Baptismal Certificate not signed by the deceased accepting paternity, contrary to section 15 of the Registration of Births, Deaths and Marriages Act, Cap. 12:13. Ms. Henderson further submitted that under section 6 of the Status of Children Act, a Baptismal Certificate is not recognised as a document proving paternity.
- [21] On behalf of the Registrar, learned Crown Counsel, Ms. Eshe Hendrickson agreed that though the court lacked jurisdiction to make orders revoking the registration and the grant of letters of administration, it could make declarations that the Registrar acted ultra vires.
- [22] In reply, Mr. Byron submitted that the court lacked jurisdiction to make the declarations sought by the claimants since this is a private law matter engaging no public law remedies. He cited **Gouriet v Union of Postal Workers**² as authority for this proposition. Alternatively, Mr. Byron submitted that if the court was of the view that it could grant declarations, the grant of a declaration is discretionary. In exercising its discretion, the court should consider that the Magistrate's Court has declared the deceased to be the putative father of Miguel Liddie and this is prima facie evidence of this fact by virtue of section 6 (3) of the Status of Children Act. In these circumstances the court should decline to grant the declarations sought.

² [1978] AC 435.

[23] The starting point is the Registration of Births, Deaths and Marriages Act, Cap. 12.13. Section 15 (3) provides:

“If at any time after the registration of the birth of a child whose father’s name is not registered the Registrar-General is satisfied that a declaration of paternity in respect of the child has been made by the High Court under section 11 of the Status of Children Act, Cap. 12.14 the Registrar-General shall authorise the entry in the register of the name of the father and such other particulars relating to the father as are supplied to him or her.”

[24] This means that after the registration of a child’s birth, the Registrar-General may only enter a father’s name on the birth certificate where she is satisfied that a declaration of paternity in respect of the child has been made by the High Court under section 11 of the Status of Children Act, Cap. 12.14. This section provides no scope for the Registrar-General to act on any other document, including a Baptismal Certificate; nor indeed on any order of this court in a probate claim to enter the father’s name, much less on a declaration of this court that she acted ultra vires in entering the father’s name on the register of births.

[25] Indeed, on a probate claim seeking revocation of the grant of letters of administration, it does not appear to me that in the circumstances of this case, CPR 68 contemplates that the court may do anything but either grant or refuse to make an order revoking the grant. I can discern no authority therein for making a declaration in relation to such extraneous matters as the lawfulness or otherwise of the Registrar-General’s actions.

[26] Both parties have referred me to the case of **Hugh Bailey v Carolyn Morson and another**³ where the court held that it had no power to power to direct the Registrar of the High Court in Antigua to amend the Register of births to remove the claimant’s name as father, upon a DNA test having confirmed that he was not the biological father of the child of the first defendant. The court made reference to Section 28 (3) of the Births and Deaths (Registration) Act (Antigua) which gives the Registrar-General power to correct an error of fact or substance in any Register. This is in identical terms to section 20 (3) of our Registration of Births, Deaths and Marriages Act.

³ ANUHCv2016/235.

[27] However, given my conclusion that the evidence establishes that Miguel Liddie is the son of the deceased, whose name is entered on the Register of Births, this would not be a case of correcting any error of fact or substance on the Register.

[28] For all of the foregoing reasons I would dismiss the claim with costs to the defendants.

Trevor M. Ward, QC
High Court Judge

By the Court

Registrar