

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

GRENADA

CLAIM NO: GDAHCV2015/0506

Between:

**Catherine Marjorie Jessamy
(The Administratrix of the Estate of Whilemina Jessamy
also spelt Whilehelmina Jessemy, Deceased)**

Claimant

and

Dexter St. Louis

Defendant

BEFORE: **Her Ladyship, the Honourable Agnes Actie
(High Court Judge)**

VIA ZOOM

APPEARANCES:

Mrs Sabrita Khan Ramdhani for the claimant
Mr Henry Paryag for the defendant

PRESENT:

Defendant present
Augustine Jessamy for the claimant

DATED: The 16th day of November 2021

ENTERED: The 22nd day of November, 2021

ORAL RULING

1. This matter comes on today for trial in a fixed date claim filed on 12th November 2015 by the claimant as administrator of Whilemina Jessamy, seeking a declaration that the property belongs to the Estate of Whilemina Jessamy, deceased; an order for possession; mesne profits; damages for trespass; an order that the statutory declaration in the name of the defendant Dexter St Louis be set aside, recalled or cancelled.

2. The defendant in response denies the claim and seeks a declaration that the property belongs to part of the estate the Late Mary St. Louis daughter of Whilemina Jessamy, (the deceased claimant); cancellation of the letters of administration; and that the statutory declaration in his name remains in full effect.
3. The first observation is that the claim is seeking a declaration of ownership and should have commenced by ordinary statement of claim and not a fixed date claim. **CRP 8.1(5)** provides for filing of a claim using Form 2 (Fixed Date Claim) for possession of land and not for declaration of ownership of land. The court notes the increased practice of using the Fixed Date Claim to initiate claims dealing with ownership of land or seeking declarations of ownership of land which should be commenced by ordinary statement of claim. The form used does not invalidate the proceedings as an order can be made to have the claim continue as an ordinary claim form. However, it is a waste of the court's resources and time.
4. The court also notes the directions given by Gilford J at a Pre-Trial Review held on 24th March 2017 where the parties were directed to file and serve a list of authorities which they propose to cite in support of propositions; Skeleton arguments within six (6) weeks before trial; the trial bundle be filed fourteen (14) days before the date fixed for trial: and for documents to be settled seven (7) days before the trial bundle is to be filed.
5. The matter came on for further Pre-Trial Review before this court on 14th December 2020 and the trial was scheduled for today 16th November 2021. The Claimant was again directed to file the trial bundle in keeping with CPR 39.1 and the parties were to file and serve submissions on or before the 30th October 2021.
6. The claimant is in breach of all the courts orders, the Emergency Practice Direction and CPR 2000 in relation to the trial of this matter. In an email to the Registrar (Ag.) dated 10th November 2021, the Chambers of Sabrita Khan Ramdhani, legal practitioner for the claimant sent an electronic trial bundle to the Registrar for filing. The email read:

“Dear Madam Registrar, On the instructions of Counsel, please see the following documents attached:1. GDAHCV2015/0506 - Catherine Jessamy v Dexter St. Louis - Trial Bundle. We will deliver copies of same and make the necessary payments tomorrow the 11th of November 2021”.

7. On giving that undertaking, the Registrar accepted the filing and stamped the document on 11th November 2021. However, the claimant only paid the filing fee on the 15th November 2021, that is the eve of the trial, at 1.15 p.m. together with a witness statement of Augustine Jessamay to be used at the trial. The legal practitioner for the claimant further filed a 2nd trial bundle on the 15th November 2021 at 2.55 p.m.

Discussion

8. The Emergency Measures Practice Direction No. 1 of 2021, provides at rule 3.1: - Prescribed fees that are due on a document filed by e-mail shall be paid at the time and in the manner specified by this Practice Direction. Paragraph 3.2: - It is the responsibility of every Legal Practitioner (or their firm) to provide an undertaking, as set out in Form 1, to pay all filing fees which are due as a result of the documents which are filed in accordance with this Practice Direction as soon as practicable after the filing has been submitted. Paragraph 3.4:- where the Registrar determines that it has become practicable for a legal practitioner or law firm to pay the filing fees pursuant to the undertaking and issues a request for payment, **then unless payment is made within 72 hours of the request, the undertaking shall be deemed to have been breached and no subsequent documents shall be accepted for filing from that legal practitioner or law firm.** (Emphasis added). Further, a Judge or Master may take the failure to make payment into account as a factor when making any costs order in respect of any application or hearing.
9. It is clear that the Legal Practitioner for the claimant is in breach of the undertakings given to the Registrar. No subsequent documents shall be allowed to be filed as a result of that breach. Any further document filed subsequent to the expiration of the timeline could not be accepted from the legal practitioner. In essence it means that the trial bundles and witness statement filed on the eve of the trial without the leave of the court cannot be relied upon. The claimant has not made any application for an extension of time or relief from sanctions. At the hearing this morning, counsel Mrs Ramdhani for the claimant, informs that the witness statement of Augustine Jessamay, filed on the 15th November, is the attorney by Power of Attorney for the claimant executed in 2019. The court notes that to date, the claim has not been amended to reflect the representation in keeping with Practice Direction 3.3 (Re Court Documents). A witness statement filed late without leave of the court and relief from sanctions pursuant to Rule 26.8 cannot be called at trial. **(See CPR 29.11).**

10. Litigation under the CPR 2000 is court driven and it is a breach of the overriding interest to allow the nonchalant attitude towards the court's limited resources, orders, and practice directions. The Privy Council in **Crick and another v Kurt Brown et al**¹ states "A party who has failed to comply with a step directed by the court should seek an extension of time and should understand that it might be refused". In the case at bar the claimant has failed to file an application for an extension of time or for relief from sanctions or to give any plausible reasons for the myriad of delays and noncompliance with the rules, practice directions or court orders. The court cannot countenance such blatant disregard of its processes. There presently exists a backlog of cases in the court and the continuous breaches do not assist the court in its efforts to deal with the number of matters languishing in the system.
11. Counsel for the defendant states that he was not contacted in the preparation of the trial bundle and does not have any input in the trial bundles filed. This is a further breach on the part of the claimant of CPR 39.1 and the trial directions issued by Gilford J in 2017. The court notes that the defendant in his defence is seeking to invalidate the letters of administration on which the claimant relies to pursue the claim. However, the defendant did not file a counterclaim. The challenges raised in the defence further supports the need to have included the defendant's documents in the preparation of the trial bundle.
12. The failure of claimant to comply with the court orders and CPR 2000 means that the trial cannot be conducted today. The court 's calendar is full until 2023. The claimant has not pursued the claim with the alacrity required under CPR 2000.
13. The Privy Council in **Crick** on an appeal to set aside an order striking out an appeal citing **Attorney General of Trinidad and Tobago v Keron Matthews [2011] UKPC 38, paras 15-16** and **Roland James v Attorney General of Trinidad and Tobago** said; " The effect of this was that, if there was non-compliance with the directions and a question arose how the court should proceed in the light of that, the party who failed to comply would be subject to the general case management power of the court under CPR Part 26.1. That power would fall to be exercised so as to further the overriding objective in

¹ [2020] UKPC 32

CPR Part 1, just like any other power or discretion of the court arising under the Rules or any order made under the Rules. The Board said further: “This is a case in which the Board has no hesitation in dismissing the Cricks’ further appeal and in supporting the Court of Appeal’s “commendable desire to encourage a new litigation culture” and “the steps that it is taking to rid Trinidad and Tobago of the ‘cancerous *laissez-faire* approach to civil litigation’”). The Privy Council said that the overriding objective is central to case management under the Rules.

14. The striking out of a claim is described as draconian and is to be used sparingly as last resort in cases of serious and blatant breaches of CPR 2000. The court is of the view that the claimant’s claims is not meritorious in light of the issues raised in the defence. The court taking into consideration all the factors is of the view that this extant claim warrants striking out for all the breaches outlined above.

ORDER

15. For the above reasons, it is ordered and directed as follows:

1. The claimant’s claim is struck out with costs to the defendant in the sum of \$1,000.00.
2. Mrs Ramdhani for the claimant made an oral application for leave to appeal and stay of execution. Accordingly, leave to appeal and a stay of execution are granted.
3. The claimant shall file and serve the notice of appeal within twenty (21) days of today’s date.

BY THE COURT

REGISTRAR