

Case Type: Administration Claim

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV 2019/0097

BETWEEN:-

IN THE MATTER OF AN APPLICATION BY MARCIA DANIELS AS THE PERSONAL REPRESENTATIVE OF Joseph Patrick Daniels under section 7 of the Intestates' Estate Act Chapter 9:03 of the Laws of the Commonwealth of Dominica

Appearances:

Cara Shillingford for the Applicant

David Bruney for the interested party Mary Mavis Edwin

2020: February 17

[1] **Stephenson J.:** This is an application by Marcia Daniels the widow of Joseph Patrick Daniel ('the applicant') for leave to redeem her life interest in her deceased's husband Estate and for an order to sell the property forming part of his estate and to distribute the proceeds of sale in accordance with the provisions of the Intestates' Estates Act of the Commonwealth of Dominica¹.

[2] Joseph Patrick Daniel of 65 Croydon Road Surrey CRDJ2JS England and of Scott's Head Dominica died on the 7th day of March 2018 at Croydon University Hospital in England intestate.

¹ Chapter 9:03 of the Laws of the Commonwealth of Dominica

The deceased had no issue. Surviving him at his death was his spouse Marcia Daniels of the same address and three siblings of the half blood.²

[3] Based on the averments by the Applicant the deceased left real property located at Castle Estate in the Parish of St Mark in the Commonwealth of Dominica and registered in his name in Book V14 Folio 63. This property has been declared as being valued at \$384,400.00 in the declaration and account of all of the estate which by law devolves to vest in the personal representative of Joseph Patrick Daniel Deceased.³

[4] The applicant lives in England is 59 years old having been born on the 21st January 1960 in England. The estate in the case at bar can be described as a cross border estate meaning that the deceased died domiciled in one country leaving property in another country. "As a general rule all questions concerning rights over immovables are governed by the law of the location ('lex situs')"⁴. It is therefore established law that where a person dies in the England with property (Moveable) in another country the law of that country shall apply.⁵ In the case at bar the deceased was Dominican and died in England leaving land (the subject of the case at bar) located in Dominica therefore the law to be applied would be the law related to *lex situs* that is the law of Dominica.

[5] On the 5th July 2019 Mary Mavis Edwin of Point Michel and sister of Joseph Patrick Daniel swore to an affidavit making to the following relevant averments that :

- a. she is the surviving lawful sibling of Joseph Patrick Daniel and that it was she who was referred to as Mrs May Edwin in the affidavit of the applicant;
- b. she that she has a legitimate interest in her brother's estate and wishes to assert her right pursuant to the intestacy laws of Dominica

² As stated in the Affidavit of the Applicant Marcia Daniels sworn to on the 10th day of May 2019

³ Declaration in the application to reseal in Dominica the letters of Administration granted to the Applicant in England

⁴ Halsbury's Laws of England (2011) Volume 19 at Paragraph 695

⁵ New Law Journal 152 NLJ 1374

- c. she wishes to have her interest in her brother's estate as the sole surviving sibling is to be properly calculated; and
- d. she wishes to have the opportunity to purchase her brother's property taking into consideration her share in the said property.

[6] On the 18th September 2019, Marcia Daniels applied for the following orders:

- a. an order that Mary Mavis Edwin be appointed as representative of any and all the siblings of her deceased husband Joseph Patrick Daniel for the purposes of this action who were living at the time of his death;
- b. That Mary Mavis Edwin be appointed as Administrator *pendente lite* of the estate of Ruford Giraud and Francis Charles pending the determination of this application;

[7] In the affidavit sworn in support of the Application sworn to by Melissa Nelson a legal clerk in the chambers of Counsel who has conduct of the application provides the evidential grounds for the application. Miss Nelson avers that she has been advised of the salient and relevant matters by the applicant in this matter as follows:

- a. That Ruford Giraud was a sibling of the half blood of the applicant's husband and he predeceased the applicant's husband on the 27th April 2005;
- b. Francis Charles was a brother of the applicant's husband who survived him he, having died on the 10th May 2019 and that as such he is to be considered a surviving sibling entitled to share in the estate of the applicant's deceased husband;
- c. That she does not know if anyone has been appointed personal representative of the estate of Francis Charles deceased;
- d. That Mary Mavis Edwin is the sole surviving sibling of the applicant's husband and is a fit and proper person capable of and to be appointed personal representative of her deceased brother's estate.

[8] Miss Nelson further averred that she has personally conducted a search at the registry and has been informed by the probate clerk and verily believes that there has been no grant of representation made or issued for Francis Charles deceased.

Distribution of the estate of Joseph Patrick Daniels Deceased

[9] In her affidavit Mary Mavis Edwin avers that she is the lawful surviving sister of the applicant's deceased husband and that she has been advised by her attorney and verily believes that she has a legitimate interest in the intestate estate of her deceased brother pursuant to the provisions of the Intestates' Estate Act.

[10] The rules of intestate succession in the Commonwealth of Dominica are laid down by the Intestate's Estates Act the provisions of which provides for the distribution of the residuary estate of intestates⁶.

[11] In the case at bar the deceased died leaving a surviving spouse no issue and two siblings, one sibling is described as a lawful sibling⁷ and the other as a sibling⁸. It is noted that in her affidavit Mary Mavis Edwin makes no mention of Francis Charles who is said to be the brother of the applicant's husband and who is said to have died on the 10th May 2019. No evidence has been adduced to this court by the applicant or by Mary Mavis Edwin that the said Mary Mavis Edwin or Francis Charles are indeed the siblings of the deceased Joseph Patrick Daniel, further as to proof of the date that Mr Charles died.

[12] The law is clear that if a person dies intestate with no issue or parent subject to the interest of the surviving spouse the residuary estate of the intestate shall be held in trust for:

- a. "first on the statutory interests for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trust, then
- b. secondly on the statutory trusts for the brothers and sisters of the half blood of the intestate ..."⁹

[13] Therefore based on the minimal facts which are available to the court the residuary estate of the applicant's husband is to be distributed to his siblings who were alive at the time of his death. It

⁶ Section 4(1) of the Intestates' Estates Act Chapter 9:03

⁷ Paragraph 2 of the affidavit of Mary Mavis Edwin filed on the 5th July 2019

⁸ Paragraph 4 of the affidavit of Melissa Nelson sworn and filed on behalf of the applicant on the 18th September 2019

⁹ Intestates' Estates Act Chapter 9:03 at Section 4 (1) (e) (i) & (ii)

would be for those siblings to establish their entitlement as the act makes provision for brothers and sisters of the whole blood and brothers and sisters of the half blood.

[14] It would therefore be for Mary Mavis Edwin and the heirs of Francis Charles to properly establish to the personal representative of the estate of Joseph Patrick Daniel their entitlement to the residuary estate of the said intestate.

[15] The crux of the application before the court is that Marcia Daniels the surviving spouse and personal representative of the estate of Joseph Patrick Daniel is seeking redeem her life interest in her deceased husband's estate. She is also the "tenant for life". It is clear to this court that Mary Mavis Edwin is not objecting to Mrs Daniels' application however she seeks to question the calculation of the value of that redemption.

[16] Section 7 of the Intestates' Estate Act makes provision for the redemption life interest by the surviving spouse. Section 7(1) provides

*"Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof, the personal representative may, either with the consent of any such tenant for life (not being also the personal representative) or, **where the tenant for life is the sole personal representative, with the leave of the Court**, purchase or redeem the life interest (while it is in possession) by paying the capital value thereof (**reckoned according to the tables selected by the personal representative**) to the tenant for life or the persons deriving title under him or her and the costs of the transaction, and thereupon the residuary estate may be dealt with or distributed free from the life interest"* (Emphasis mine)

[17] In the case at bar, it is clear that the applicant as the surviving wife of Joseph Patrick Daniel has a life interest in the deceased husband's residuary estate which she can redeem. The applicant is the sole personal representative of the estate and has taken the correct step to seek the leave of the court to redeem the said interest.

[18] The issue at hand is how the capital value of the said life interest is to be calculated. Section 7(3) of the Intestates' Estates Act goes on to provide that "*in subsection (1) the expression "according to tables" means according to tables which **may be** selected by a personal representative under section 48 of the Administration of Estates Act, 1925*" (Emphasis mine)

[19] Learned Counsel Cara Shillingford on behalf of the Applicant drew the court's attention to and placed particular reliance on the case of **Muriel Brown –v- Brian Miquita Hamilton**¹⁰. It was submitted that issue that arises in this case is the same as arose in that case. Learned Counsel Cara Shillingford submitted that this case provides some guidance on how the calculation needs to be done.

[20] In the **Muriel Brown** case, Justice Pearletta Lanns after considering Section 7 (1) of the Intestacy Act Cap 12.06 of the St Kitts and Nevis the Intestacy Act Cap 12.06 which is in identical terms of Section 7(3) Dominica act after considering the arguments of counsel on behalf of the claimant in that case and discerning the position of the defendant based on the defendant's counsel's submission in that case agreed with learned counsel on behalf of the claimant and found that the life expectancy of a woman had increased from that which was provided for in the Succession Act of 1853 from 43 to 83 in 2017.

[21] The learned judge in that case¹¹ was persuaded by arguments mounted on behalf of the claimant that "*the best approach is to direct the administrators to refer to the most current actuarial tables available from reputable life assurance companies doing business in the Caribbean, which tables are to be used by the personal representatives in calculating the capital value of the life interest of the claimant.*"¹²

[22] Constituently with the general rule relating to movables and land, the appropriate law to decide questions of law is the law of the place of the site of the land, where the property is situated (the *lex situs*) which was in the ordinary way the law of the place where the land is located therefore the applicable law to be applied to this application would be the laws of Dominica. Even though the

¹⁰ SKBHCV2017/0015

¹¹ Muriel Brown *ibid*

¹² *Ibid* at paragraph 18

applicant is resident in England the real property consisting of the estate of Joseph Patrick Daniels is located in Dominica therefore falls to be considered under the Laws and Practice of Dominica based on the applicable principle of *Lex Situs*¹³.

[23] It is noted that the respondent sibling of the deceased Joseph Patrick Daniels has through her attorney and by way of affidavit has indicated to the court that she is interested in purchasing the applicant's interest in the property. There is nothing on law to the best of my knowledge prohibiting this and this court urges that parties come to an agreement soonest as to the appropriate price and the quantum to which the applicant would be entitled.

[24] This court is prepared to follow the ruling of Madam Justice Lanns in that in the circumstances of this case it would be appropriate for the Personal Representative to refer to and use the most current actuarial table available from a reputable life assurance company doing business in the Dominica and would accordingly direct and order as follows:

- I. That the method of calculating the capital value of the interest of Mrs. Marcia Daniels under the estate of her late husband Joseph Patrick Daniels deceased, be in accordance with the actuarial tables available from reputable life assurance companies doing business in the Dominica;
- II. That Mrs. Marcia Daniels as personal representatives of the Estate of Joseph Patrick Daniels, deceased, do refer to the most current actuarial tables available from reputable life assurance companies doing business in the Caribbean, within 60 days of delivery of a sealed copy of this judgment and order.
- III. To facilitate an accurate determination of the capital value of the property subject of this application, Marcia Daniels as Personal Representative of the estate of Joseph Patrick Daniels must present the certificate of title of the said property, within 60 days of the date

¹³ Re United Railways of The Havana and Regal Warehouses Ltd [1958] Ch 724, [1958] 2 WLR 229

of delivery of a sealed copy of this judgment, and in any event, prior to their computation of the capital value.

- IV. That the applicant is at liberty to retain an expert (such as a professional accountant) to calculate the said value; and any costs associated therewith be paid from the estate;
- V. That the costs of these proceedings be paid from the estate of the deceased.
- VI. Liberty to apply.

[25] As it regards the following application brought by Mrs Daniels for:

- a. an order that Mary Mavis Edwin be appointed as representative of any and all the siblings of her deceased husband Joseph Patrick Daniel for the purposes of this action who were living at the time of his death;
- b. That Mary Mavis Edwin be appointed as Administrator *pendente lite* of the estate of Ruford Giraud and Francis Charles pending the determination of this application;

[26] These applications are granted as prayed.

M E Birnie Stephenson
High Court Judge

STATE

BY THE COURT

REGISTRAR