

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2024/0017

BETWEEN:

[1] JOANNE WALDRON
[2] GREGORY WALDRON
[3] HANNAH WALDRON
[4] SHAKIRA PHILLIP
[5] JERMAINE WALDRON

Appellants

and

[1] JUSTIN WALDRON

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis

Justice of Appeal

The Hon. Mr. Reginald Armour

Justice of Appeal [Ag.]

The Hon. Mde. Cadie St. Rose-Albertini

Justice of Appeal [Ag.]

Appearances:

Mr. Cajeton Hood with Ms. Amy Bullock Jawahir and Ms. Rena Banfield for the
Appellants

No appearance for the Respondent

2025: July 8.

Sections 3, 8(2) and 10 of the Partition Act – Section 38 of the Conveyancing and Law of Property Act - Part 7 of the Civil Procedure Rules (Revised Edition) 2023 - Locus standi - Whether beneficiaries of an intestate estate may commence partition proceedings absent a grant of letters of administration - Whether the learned judge erred in law in dismissing the claim as a nullity on the mistaken premise that the 3rd, 4th and 5th appellants lacked authority or sufficient interest to file the claim – Distinction between representative estate claims and personal statutory claims - Whether the learned judge erred in law when she misunderstood that the 1st and 2nd appellants did not institute proceedings on behalf of the estate of Ralph Waldron but in their own right as owners vested with one-quarter interest in the property –

*Service out of the jurisdiction - Whether the learned judge erred in applying probate principles requiring a grant of letters of administration in assessing the claim and failed to give proper consideration to sections 3 and 8 of the Partition Act – Applicable test for service out of the jurisdiction - Whether the learned judge misdirected herself on the applicable test for service out of the jurisdiction when she dismissed the application on the ground that there was no ‘serious dispute’ on the authority of **AK Investment CJSC v Kyrgyz Mobil Tel Limited and Others and other appeals** instead of the test in Part 7 of the Civil Procedure Rules (Revised Edition) 2023*

REASONS FOR DECISION

- [1] **ST. ROSE-ALBERTINI JA:** This is an interlocutory appeal filed on 11th December 2024 seeking to set aside an Order of the court below dated 19th September 2024, wherein a learned judge of the High Court dismissed a fixed date claim, and an application to serve the claim out of the jurisdiction, filed by the appellants, and removed them from the court’s list. In summary, the reasons advanced by the learned judge were that the appellants (claimants in the court below) had no legal standing to file the claim, that the claim was void ab initio and as such a nullity, consequently there was no serious issue to be tried, to warrant service out.
- [2] At the hearing of the appeal on 8th July 2025 the Court considered the following: (i) the Notice of Appeal and grounds set out therein filed on 11th December 2024; (ii) the Order of the court below dated 19th September 2024; (iii) the hearing bundle filed on 28th May 2025; and (iv) the skeleton arguments and authorities filed on behalf of the appellants on 7th March 2025. The Court also gave due consideration to the brief oral submissions advanced by counsel for the appellants, and made the following Order:
- (1) The appeal is allowed.
 - (2) The order of the learned judge dated 19th September 2024 is set aside.
 - (3) The application for leave to serve outside the jurisdiction is remitted to the High Court to be determined by another judge of the high court.

(4) The fixed date claim form filed on 24th June 2024 is restored to the court's list.

[3] The Court undertook to provide written reasons for its decision. These are those reasons.

Background

[4] It is necessary to briefly outline the procedural history of this matter, to set the appropriate context for the Court's deliberation and disposal of the appeal.

[5] On 24th June 2024, the appellants filed a Fixed Date Claim Form ("the claim"), pursuant to sections 3 and 8(2) of the **Partition Act**¹ ("the Act"), and section 28 of the **Trustee Act**².

[6] The claim sought an order for sale in lieu of partition of a parcel of land situate at Confer, Calivigny in the Parish of St. George, in the State of Grenada ("the Property").

[7] On 26th June 2024, the appellants filed an application for leave to serve the respondent (defendant in the court below) out of the jurisdiction pursuant to rules 7.3(2)(a), 7.3(6), 7.4 and 11.17 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** ("CPR 2023") and Practice Direction 7 No. 4 of 2008. The application came on for hearing before the learned judge on 19th September 2024. Both the application and the claim were dismissed. Consequently, the claim was never served on the named respondent, as the defendant in the court below. As such, this appeal was undefended.

¹ Chapter 225, Revised Laws of Grenada.

² Chapter 329, Revised Laws of Grenada.

- [8] In the claim, the appellants sought, *inter alia*:
- (1) an order that the Property be sold in lieu of partition and that the proceeds of sale be distributed among the parties in specified shares;
 - (2) an order accepting the valuation report of the Property prepared by Kenrick Gabriel & Associates Ltd. dated 30th May 2023;
 - (3) an order granting the respondent first option to purchase the Property, subject to proof of financial capacity, failing which the Property be sold on the open market; and
 - (4) ancillary and consequential relief, including costs.
- [9] The claim was supported by an affidavit sworn by the 1st appellant, Joanne Waldron,³ in which she deposed that the 3rd, 4th and 5th appellants are the children of her late brother, Ralph Waldron, who died intestate on 17th April 2023, and that the 2nd appellant and the respondent are her brothers. The affidavit contained exhibit “JW2” which was an Indenture dated 26th June 2013,⁴ by which the 1st appellant, the 2nd appellant, the late Ralph Waldron, and the respondent Justin Waldron became seized of the Property in fee simple, as tenants in common. The said Indenture is recorded in the Deeds and Land Registry of Grenada in Liber 13-2013 at page 482.
- [10] The 1st appellant further deposed that, at the time of filing the claim, an application for a grant of letters of administration in respect of the estate of Ralph Waldron had not yet been filed but would be shortly. She exhibited an unfiled oath of administratrix presumably intended to be filed in that application, marked “JW-1”.⁵
- [11] On 19th September 2024, when the application to serve the claim outside the jurisdiction came up for hearing, the learned judge raised concerns regarding the

³ Located at pages 11–14 of the Electronic Hearing Bundle filed on 28th May 2025.

⁴ Located at pages 17-20 of the Electronic Hearing Bundle filed on 28th May 2025.

⁵ Located at pages 17-20 of the Electronic Hearing Bundle filed on 28th May 2025.

locus standi of the 3rd, 4th and 5th appellants, in the absence of a grant of letters of administration in respect of the estate of Ralph Waldron. The learned judge, relying on the case of **Quintana v Surrey & Sussex Healthcare NHS Trust**⁶ and the text *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate*⁷ expressed the view that, until the estate of the deceased had been administered and vested by way of a grant, the 3rd, 4th and 5th appellants held an inchoate interest only and were not competent to bring or maintain the proceedings. The learned judge further indicated that the absence of a grant could not be cured by an amendment premised on a subsequent grant of letters of administration.

- [12] At the conclusion of that hearing, the appellants' application for leave to serve the claim form outside of the jurisdiction was dismissed, and the claim was struck out.
- [13] The Court observed in the skeleton submissions filed by counsel for the appellants on 7th March 2025, that the 3rd appellant, Hannah Waldron was granted letters of administration in the estate of Ralph Waldron on 3rd October 2024⁸ after the learned judge's ruling. A copy of such grant was not provided to the Court.

Grounds of Appeal

- [14] The grounds of appeal⁹ are best summarised as follows:
- (1) The learned judge erred in law by dismissing the claim as a nullity, on the mistaken premise that the 3rd, 4th and 5th appellants lacked authority or sufficient interest to bring the claim, having wrongly characterised it as one brought in a representative capacity on behalf of the late Ralph Waldron, when in fact they possessed presumptive interests sufficient under sections 3 and 8 of the **Partition Act** to institute the claim, without the need for letters of administration, and had in fact brought the claim in their personal and beneficial capacities. Further, the learned judge

⁶ High Court (QB) 28th March 2017, unreported.

⁷ 21st edn., (2018) para 5 -15.

⁸ Located at pages 75-88 of the Electronic Hearing Bundle filed on 28th May 2025.

⁹ Located at pages 53-61 of the Electronic Hearing Bundle filed on 28th May 2025.

erred in law when she misunderstood that the 1st appellant did not aspire to act on behalf of the estate of Ralph Waldron but brought the claim in her own right as an owner vested with a one-quarter interest in the Property. Moreover, the learned judge erred in law when she failed to consider that the 1st and 2nd appellants had vested ownership in the Property, sufficient to bring the claim in their own right.

- (2) The learned judge erred in law by applying probate principles requiring a grant of letters of administration, in assessing the claim, notwithstanding established principles in relation to an unadministered intestate estate, for the purposes of the Act, and failed to give proper consideration to sections 3 and 8 of the Act which entitle co-tenants, co-parceners, and persons interested or presumptively interested in land to bring partition proceedings, including applications for sale.
- (3) The learned judge erred in law in dismissing the application for service out of jurisdiction on the ground that there was no 'serious dispute,' thereby misdirecting herself on the applicable test, which under Part 7 of CPR 2023 and the decision in **AK Investment CJSC v Kyrgyz Mobil Tel Limited and Others and other appeals**¹⁰ is whether there is a real or serious issue to be tried on the merits. Further that the appellants had plainly established this threshold.

Grounds 1 and 2

- [15] These two grounds overlap and will be dealt with together, for convenience.

Appellants' Submissions

- [16] The appellants' contended that the learned judge erred in fact and/or in law by dismissing the claim in its entirety. They submitted that this error arose from a failure

¹⁰ [2011] UKPC 7.

to properly appreciate the nature of the claim and, in particular, the standing of the appellants to bring the proceedings in their personal capacity.

[17] The appellants further submitted that the learned judge wrongly characterised the claim as a representative action brought on behalf of the estate of Ralph Waldron. However, none of the appellants purported to act as administrators or personal representatives of the deceased, nor did they rely on any authority derived from a grant of letters of administration. Instead, the claim was brought by all the appellants in their personal and beneficial capacities, as persons either having title to, or presumptively interested in, the Property. In this regard the 1st and 2nd appellants are registered proprietors with vested title in the Property and hold same as tenants in common with the respondent and the late Ralph Waldron, each having a one-quarter share in the Property. The 3rd, 4th and 5th appellants are the children of the late Ralph Waldron and have a beneficial or presumptive interest in his one-quarter share in the Property.

[18] The appellants argued that in these circumstances, the absence of letters of administration at the time the claim commenced was immaterial. They contend that the principles from **Quintana v Surrey and Sussex Healthcare NHS Trust**,¹¹ and the passage from **Williams, Mortimer and Sunnucks**,¹² which the learned judge relied on, are inapplicable, as those authorities concerned claims brought on behalf of estates rather than statutory claims brought by beneficiaries in their own right.

[19] The appellants further submitted that the learned judge failed to give proper effect to sections 2(2), 3, and 8(2) of the Act. They contended that section 2(2) extends the application of the Act to all lands held in co-tenancy, while section 3 expressly empowers co-parceners, joint tenants, and tenants in common to compel severance and partition, including in circumstances where one or more parties 'has or shall

¹¹ High Court (QB) 28th March 2017, unreported.

¹² Williams, Mortimer and Sunnucks, Executors, Administrators and Probate (21st edn., Sweet & Maxwell 2018) para 5-15.

have’ an estate or interest in the land. The appellants further contended that this language clearly encompasses persons whose interests are not yet fully vested. (Emphasis supplied)

[20] In addition, the appellants submitted that section 8(2) of the Act permits applications for sale to be made by persons who are ‘*interested or presumptively interested*’ in the property. They argued that this provision expressly recognises standing in persons with beneficial, inchoate, or expectant interests, and that no requirement exists for such persons to hold legal title or a vesting deed before approaching the court.

[21] Relying on established legal definitions to support their position, the appellants argued that the 3rd, 4th and 5th appellants fall within the meaning of co-tenants, coparceners, and persons presumptively interested in the subject property by virtue of being the children of the late Ralph Waldron who died intestate. Their entitlement, they argued, arose by operation of law upon his death and did not depend upon the prior grant of letters of administration.

[22] The appellants further submitted that the learned judge’s failure to distinguish between representative claims brought on behalf of an estate and beneficial claims brought under the Act constituted a material error. They contended that this mischaracterisation led directly to the erroneous conclusion that the claim was a nullity and to its dismissal in entirety. As such, the position advanced is that the 3rd, 4th and 5th appellants had the requisite *locus standi* to institute the claim in their personal capacities, and dismissal of the claim was wrong in law and ought to be set aside.

[23] The appellants further argued that the learned judge was wrong in law and in fact, regarding the standing of the 1st appellant, who did not initiate the claim on behalf of her deceased brother Ralph Waldron, but did so in her personal capacity as the legal owner vested with one-quarter share in the Property, by virtue of the Indenture

dated 26th June 2013.¹³ They contended that the learned judge was wrong to dismiss the claim in its entirety, and failed to give any credence to the right and entitlement of the 1st and 2nd appellants, both of whom have a vested interest in the Property, and could have carried on with the claim in their respective names.

Analysis

The 1st and 2nd Appellants

- [24] The Court is of the opinion that the learned judge erred in law in striking out the claim in its entirety. That error arose from (i) a failure to recognise the independent standing of the 1st and 2nd claimants under the Act and (ii) an overly rigid application of the principles governing estate litigation, which was unnecessary, in the statutory context of the Act. Additionally, there were several other recourses which were open to the learned judge, which would have enabled the claim to proceed.
- [25] The 1st and 2nd appellants were registered proprietors and tenants in common of the Property, each holding a one-quarter share by virtue of their vested legal ownership of the Property. Their standing to bring proceedings under section 3 of the Act, in their own right, was therefore incontrovertible.
- [26] Section 3 of the Act expressly confers standing on “***all joint tenants and tenants in common***” to compel severance or partition. (Emphasis added) This statutory right is not contingent on the status or standing of other co-owners or persons with inchoate interests, nor does it depend on unanimity among all persons having an interest in the land.
- [27] It is well settled that one co-tenant acting alone may invoke the jurisdiction of the court for partition or sale. This principle was acknowledged in **Re Buchanan-Wollaston’s Conveyance**,¹⁴ where the court accepted that a co-owner is entitled,

¹³ Exhibit “JW2” located at pages 17-20 of the Electronic Hearing Bundle filed on 28th May 2025.

¹⁴ [1939] Ch 738, pp. 742-745.

as of right, to partition or sale, subject only to statutory modification by way of consent or contractual agreement among co-tenants. This right was grounded in section 30 of the **English Law of Property Act 1925** which is in similar terms to sections 3 and 4 of the Act. The court also recognised that the objective of partition legislation is to curb prolonged and indefinite paralysis of jointly owned property.

- [28] Consequently, the 1st and 2nd appellants were properly constituted as claimants, and clothed with the requisite standing, to invoke the jurisdiction of the court for partition or sale under the Act, even if the 3rd, 4th and 5th appellants were found to have been improperly joined as claimants. Thus, the learned judge's conclusion that the entire claim was a nullity ran contrary to the well-established position in **Re Buchanan-Wollaston's Conveyance** as well as section 3 of the Act, and the 1st and 2nd appellants as claimants were well placed to proceed with the claim as of right. Short of strike out of the entire claim, it was open to the learned judge to allow the claim to proceed with these two claimants, and to simply strike out the 3rd, 4th and 5th claimants.

The 3rd, 4th and 5th Appellants

- [29] Regarding the 3rd, 4th and 5th appellants, the Court was invited to impute *locus standi* to them by virtue of sections 2(2), 3 and 8(2) of the Act. It is said that they did not bring the claim in a representative capacity but rather in their personal capacities as beneficiaries of the estate of Ralph Waldron. The appellants submit that sections 3 and 8(2) of the Act allow persons to bring partition actions in their beneficial capacities and without vested interests or deeds, such that the Act creates an exception to the established principles referenced by the learned judge in **Quintana and Williams, Mortimer and Sunnucks, on Executors, Administrators and Probates**.
- [30] This Court has come to a somewhat similar conclusion as the learned judge with respect to the standing of these appellants as claimants, as the prevailing law in Grenada is akin to English law, which is aptly stated by **Williams, Mortimer and**

Sunnucks.¹⁵ The learned authors stated the following regarding the rights of a beneficiary claiming under total intestacy: -

“Until assent or conveyance, a person interested under the will or intestacy has an inchoate right transmissible to his own representatives ... A residuary legatee has no interest in a defined part of an estate until the residue is ascertained, nor can income be ascribed to unascertained residue. **His right**, which is of course transmissible, **is to have the estate properly administered and applied for his benefit when the administration is complete. The right of a beneficiary claiming under a total intestacy is similar**, except that he takes under a statutory trust for sale and conversion”. (Emphasis added)

[31] These matters were considered by the English court in **Quintana** and more recently in **Haastrup v Okorie & Ors**¹⁶ wherein it confirmed and applied the long-standing rule that a putative beneficiary (even if asserting an interest) cannot bring or sustain an action in relation to estate assets before a personal representative is appointed. That is because the right to deal with estate assets is vested in the personal representative (administrator or executor) of the estate. In **Haastrup** the court rejected a claimant’s argument that being a beneficiary gave him the right to sue directly in respect of alleged misuse of estate property, as he was not a personal representative and no relevant exception applied. The court observed that only in special circumstances would a beneficiary be permitted to bring or continue proceedings but noted that the correct procedural route was to apply for an interim remedy, such as the appointment of a receiver pending the grant of letters of administration. In Grenada it may have been appropriate to seek relief under Part 21 of the CPR 2023.

[32] Courts in other Commonwealth jurisdictions have been consistent in the application of these principles. By way of example, the Court of Appeal of Malaysia in **Chor Phaik Har v Farlim Properties Sdn Bhd**¹⁷ addressed frontally, the rights of a beneficiary to property where a person dies intestate. Citing the same statement

¹⁵ (17th Edn.) 1993 – Chapter 78 – Assents - at pages 1050 to 1051.

¹⁶ [2016] EWHC 12 (Ch).

¹⁷ [1997] 3 MLJ 188 at pages 189 (letter C) and 195 (letter H) to 196 (Letter B).

from **Williams, Mortimer and Sunnucks** stated above at paragraph 30, that court said the following:

“Based on the above commentaries founded no doubt on the analogous principles of law concerning testate succession, it is our conclusion that, **in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter’s estate is complete and distribution made according to the law of distribution of the intestate estate**”. (Emphasis added)

[33] The Court was satisfied that this is the prevailing law in Grenada. A beneficiary under an intestate estate has only an inchoate right until administration is completed. Although such right will be recognised under the Act, it would not be sufficient to cloak the 3rd, 4th and 5th appellants with the requisite standing to institute an action in their personal capacities. Their true and correct position would be that of interested parties, as explained below in paragraph 43.

[34] Section 2(2) of the Act which the appellants relied on states as follows:

“2. Interpretation and application

(1) ...

(2) This Act shall apply to all lands the subject of co-tenancy, whether held or acquired before or after its passing.”

[35] The section is unambiguous and does not support the appellants’ contention that the 3rd, 4th and 5th appellants were entitled to file the claim in their personal capacities as co-tenants at the time the claim was filed. In addition to the reasons already given, in Grenada when a person dies intestate, real and personal property does not automatically vest in the beneficiaries, but rather vests in the Chief Justice, by virtue of section 38 of the **Conveyancing and Law of Property Act**,¹⁸ until administration is granted. The section states as follows:

“Where a person dies wholly intestate or without having appointed an executor or executrix, or having appointed an executor or executrix whose rights in respect of the executorship have wholly ceased, **as well his or her real estate as his or her personal estate** and all property held by him or her on trust or by way of mortgage **until administration is granted in respect thereof shall vest in the Chief Justice in the same manner and**

¹⁸ Chapter 64, Revised Laws of Grenada.

to the same extent as in similar cases in England such property now vests in the President of the Family Division of the High Court of Justice.” (Emphasis added)

[36] It means therefore that the reference to co-tenants in section 2(2) of the Act could only apply to persons holding that status by way of legal title. The 3rd, 4th and 5th appellants had not yet attained that status, through a vesting deed, at the time the claim was filed.

[37] Turning to section 3 of the Act which the appellants say also entitle the 3rd, 4th and 5th appellants to bring the action in their personal capacities, the section provides as follows:

“3. Power of co-tenant to compel severance

All co-parceners, and all joint tenants and tenants in common, of any estate of inheritance in their own right, or in the right of their wives, of any lands of Grenada, and all joint tenants and tenants in common for a term of life or years of any lands in Grenada, and all joint tenants and tenants in common, where one or some of them has or have, or shall have, but a particular estate or estates for a term of life or years, and the other or others has or have or shall have an estate or estates of inheritance or freehold in lands in Grenada, may be compelled in manner hereinafter provided to make severance and partition between them of all such lands respectively.”

[38] This section empowers co-parceners, joint tenants and tenants in common to compel severance, once such status has been legally attained. The Court does not agree that the use of the words “*where one or some of them has or have, or shall have*” in that section was sufficient to override the well-established principles emanating from the passage in **Williams Mortimer and Sunnucks** and the legal authorities, which affirms the position in law, that a beneficial interest does not provide standing to sue in that capacity. Undoubtedly, the 1st and 2nd appellants, being tenants in common by virtue of the Indenture, had the requisite *locus standi* to bring an action pursuant to section 3 of the Act. The same could not be said of the 3rd, 4th and 5th appellants.

[39] Section 8 of the Act speaks to the court's power to order sale instead of partition. It states as follows:

“8. Court to order sale instead of partition

(1) On a motion for partition, if it appears to the Court that, by reason of the nature of the property to which the motion relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial to the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and give all necessary and proper directions consequent thereon.”

[40] This section simply permits the court to take into account the number of parties interested or presumptively interested, in determining whether a sale would be more beneficial to them. This does not in any way equate to the right to institute an action under the Act. At the time the claim was filed the 3rd, 4th and 5th appellants were merely interested parties, with the right to have their interest recorded in accordance with section 10 of the Act.

[41] Based on the foregoing, this Court is of the considered view that sections 2(2), 3, and 8(2) of the Act did not enable the 3rd, 4th and 5th appellants to bring the claim in their personal capacities, nor do they individually or collectively displace the general rule that a grant of administration should be obtained prior to initiating an action. Nonetheless, this could not have nullified the claim in entirety, as the 1st and 2nd appellants were properly before the court in their own right.

[42] Whilst this Court accepts the learned judge's position that the 3rd, 4th and 5th appellants (claimants in the court below) lacked standing in their beneficial and personal capacities, in the absence of a grant, the Court is also concerned that an important representative party principle was overlooked by the learned judge. Regarding the unadministered estate, proceedings may generally be continued where no grant of representation has been issued, and a court may, with or

without an application, appoint a representative party on behalf of an estate to allow proceedings to continue, for the purpose of ensuring that a deceased's interest is represented. These matters are addressed in Part 21 of the CPR 2023 and need not be expounded here.

- [43] The claim could also have proceeded prior to the grant of letters of administration for the estate of Ralph Waldron, as the Act recognises that persons with a presumptive interest in the property, are afforded the opportunity to be admitted into the claim as interested parties, or that notice of the proceedings be given to them. In this regard, section 10 of the Act provides the following: -

“10. Hearing: Service of notice of order

At the hearing of the matter the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary and proper, with a view to an order for partition or sale being made on further consideration; but, subject to the provisions of this Act, **all parties interested** shall be served with notice of the order made on the hearing, and, after such notice shall be bound by the proceedings, as if they had been originally parties to the matter, and shall be deemed parties thereto: and all such persons may have liberty to attend the proceedings, and may within a time limited by rules, apply to the Court to vary or add to the order.” (Emphasis added)

- [44] It is settled practice that, given the draconian nature of the remedy of striking out a claim, a judge is required to exercise particular caution when exercising this discretion. The learned judge should at the very least, have considered whether any less severe measure was available, so as to ensure that while procedural rules are upheld, the overarching objectives of justice and fairness remained paramount. In an appropriate case, this may include striking out parties rather than the entirety of the claim.

- [45] The learned judge should also have considered that the aim of partition legislation is to facilitate co-owners who wish to secure a separation of their undivided share in property. If a co-owner is deceased, and the estate is unadministered, this should not be permitted to frustrate a well-intentioned party from securing a partition or sale, as the case may be. A court should always be reluctant to strike out a claim when

obvious amendments could be made, which would maintain the viability of the claim.

[46] In the circumstances of this case, the learned judge's task was to assess the factual basis of the asserted interests, which did not necessarily turn on the prior grant of letters of administration, but rather on proof of legal ownership, or proof of an inchoate or presumptive interest in the property, and to make the necessary orders as it relates to such persons, to enable the claim to proceed in accordance with the dictates of the Act.

[47] It therefore follows that even if the 3rd, 4th and 5th appellants lacked the requisite *locus standi* to bring the claim in their personal capacities, they would have had the opportunity to be enjoined in other ways. Firstly, as representative parties for the estate of Ralph Waldron, and secondly as interested parties either from the outset, or at a later stage of the proceedings by virtue of section 10 of the Act.

[48] With the presence of two legitimate claimants, the learned judge was wrong to deem the claim a nullity, as jurisdiction would have been established for a viable claim on behalf of the 1st and 2nd appellants. The learned judge therefore erred in law in striking out the claim as a nullity, on the basis that none of the parties before the court had *locus standi*.

[49] For these reasons, grounds 1 and 2 of the appeal succeed, albeit for different reasons in relation to ground 2.

Ground 3

Appellants' Submissions

[50] This ground generally concerns whether the learned judge was wrong in fact or in law in finding that the application to serve the originating documents out of the jurisdiction should be dismissed.

- [51] The appellants submitted that the learned judge erred, by refusing the application on the basis that there was no 'serious dispute' to be tried. They contended that neither Part 7 of the CPR 2023, nor the decision in **AK Investment CJSC v Kyrgyz Mobile Telecom Ltd and others** cited by the learned judge, imposes a requirement of a 'serious dispute'. Rather, the applicable test is whether there exists a real or serious issue to be tried on the merits, terms which they submitted are materially different. The appellants argued that, in focusing on whether there was a 'dispute' rather than whether there was a real issue to be tried, the learned judge applied the wrong legal test.
- [52] They further submitted that, when properly analysed, their claim which was brought under the Act clearly raised a real issue to be tried, namely whether the court should order partition or sale of property situated within the jurisdiction, pursuant to sections 3 and 8. The appellants also contended that the learned judge's conclusion that the 3rd, 4th and 5th appellants lacked standing infected the service-out analysis, since this led her to conclude that the claim was a nullity and therefore incapable of supporting service out of the jurisdiction.
- [53] In oral submissions Counsel for the appellants further submitted that dismissal of the claim amounted, in substance, to a summary determination under Part 15 of the CPR 2023 without the procedural safeguards afforded to a litigant in this regard. This Part deals with Summary Judgment.
- [54] Additionally, the appellants argued that, having regard to the provisions of the Act, particularly sections 6 and 11, personal service of originating documents on the respondent was not mandatory and could have been dispensed with, including by recourse to advertisement.

Analysis

[55] In addressing this ground of appeal, the appropriate starting point is the CPR 2023, which governs the procedural framework applicable to civil proceedings in this jurisdiction. Part 7 deals comprehensively with the circumstances in which court process may be served out of the jurisdiction and the procedure for doing so. The options are several, and in appropriate circumstances leave is not required, as long as a litigant complies with the requirements of the relevant rules. However, where service out of the jurisdiction is sought with leave of the court, rule 7.4(4) prescribes the applicable test. Under that rule, the court may grant leave only if it is established that:

- (1) “the claimant has a good cause of action;
- (2) the claim on which the claimant relies is listed in rule 7.3; and
- (3) the court is the appropriate forum for the trial.”

[56] Rule 7.3 in turn identifies the jurisdictional gateways through which service out of the jurisdiction may properly be effected. These include, among other categories, claims in which the whole subject matter relates to property situated within the jurisdiction (rule 7.3(6)), and claims in which there exists between the claimant and the defendant a real issue which it is reasonable for the court to try (rule 7.3(2)(a)).

[57] The Privy Council’s decision in **AK Investment CJSC v Kyrgyz Mobile Telecom Ltd** is frequently cited as articulating the English common law approach to applications for service out of the jurisdiction. However, while that authority is of persuasive value, it does not displace or override the express terms of the CPR 2023, which constitute a complete and self-contained procedural code governing civil litigation in Grenada.

[58] In addition, partition proceedings are regulated by the Act, of which sections 4 to 7 and section 11 addresses the requirements for notice and service. While the Act confers upon the court a discretion to dispense with service in certain defined

circumstances, that discretion arises only upon satisfaction of the statutory conditions and is ordinarily exercised upon application supported by appropriate evidence.

- [59] Having carefully considered the order dated 19th September 2024 and the reasons provided therein by the learned judge, it is apparent that she treated the perceived absence of *locus standi* on the part of the 3rd, 4th and 5th appellants as determinative of the application for service out of the jurisdiction. Proceeding on that basis, she concluded that there was no serious issue to be tried on the merits and consequently, no foundation upon which an order for service out of the jurisdiction could properly be made.
- [60] That approach was erroneous. As has already been determined, the 1st and 2nd appellants were registered co-owners of the Property and, as such, plainly possessed standing in their own right to invoke the jurisdiction of the court under the Act. Their claim was neither defective nor a nullity. As there existed a valid and viable claim before the court, the application for service out of the jurisdiction required independent and proper consideration in accordance with rule 7.4(4) of the CPR 2023. That analysis was not undertaken by the learned judge.
- [61] Although reference was made to **Kyrgyz**, it must be emphasised that this decision was rendered within a different procedural context, and under a different regime. The applicable test in Grenada is that prescribed by the CPR 2023, and not the English common law test derived from **Seaconsar Far East Ltd v Bank Markazi Jomhuri Islami Iran**,¹⁹ applied in **Kyrgyz**.
- [62] Even if the expression ‘serious dispute’ may be regarded as interchangeable, with ‘serious issue to be tried’, the fundamental difficulty remains that the learned judge did not apply the statutory test mandated by rule 7.4(4) of the CPR 2023, and as such there was no evaluation of whether the 1st and 2nd appellants had established

¹⁹[1993] 4 All ER 456.

an arguable cause of action, or whether their claim fell within any of the jurisdictional gateways identified in rule 7.3, or whether Grenada was the appropriate forum for the adjudication of the claim. Accordingly, this leads to the logical conclusion that the learned judge applied the incorrect test when determining the application for service out of the jurisdiction.

[63] The appellants advanced the alternative submission that service could have been dispensed with under the Act. It must be underscored that although sections 4 to 7 and section 11 of that Act confers a discretion on the court to dispense with service, that discretion does not arise as a matter of course. Section 11 of the Act imposes clear statutory preconditions, including the inability to effect service or the disproportionality of the expense involved in doing so. Ordinarily, those matters must be established by evidence and brought before the court by way of a formal application.

[64] In the present case, no application was made to dispense with service under section 11 of the Act or rule 7.11 of the CPR 2023. Further, there was no evidence demonstrating that service on the respondent could not reasonably be effected, or that the cost of service would have been disproportionate to the value of the property.

[65] In the circumstances, this Court is unable to accept the appellants' contention that service could have been dispensed with automatically under the provisions of the Act.

[66] For all the foregoing reasons, the Court concludes that the learned judge erred in law in failing to apply the correct test under the CPR 2023 when assessing the application for service out of the jurisdiction. The error flowed from, and was compounded by, the erroneous conclusion that the claim was a nullity in relation to all the claimants. Although the Act permits service to be dispensed with in limited

and clearly defined circumstances, those circumstances were not advanced in this case.

- [67] Given that the claim was wrongly struck out in its entirety, it follows that the application for service out of the jurisdiction must now be reconsidered afresh by the High Court, applying the correct legal principles. It is also appropriate that the application should be placed before a different judge.

Disposition

- [68] It is settled law that an appellate court gives no deference to, and is entitled to disturb a judgment of the court below, where it is demonstrated that the learned trial judge erred in law, including by applying the wrong legal principle or misapprehending the mandatory legal framework governing the issues before the court, thereby resulting in a decision which was blatantly wrong, or a miscarriage of justice.²⁰
- [69] In light of the above this Court is compelled to disturb the order of the learned judge, on the basis of misapplication of the law governing standing and service out of the jurisdiction, amounting to errors of law which vitiated the order.

²⁰ Michael Dufour & Others v Helenair Corporation Limited (1996) 52 WIR 188.

[70] Accordingly, the Court affirms the following orders made on 8th July 2025:

- (1) The appeal is allowed.
- (2) The order of the learned judge dated 19th September 2024 is set aside.
- (3) The application for leave to serve outside the jurisdiction is remitted to the High Court to be determined by another judge of the high court.
- (4) The fixed date claim form filed on 24th June 2024 is restored to the court's list.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Reginald Armour
Justice of Appeal [Ag.]

By the Court

Chief Registrar