

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE**

SVGHMT2004/0245

BETWEEN :

LIZINA QUASHIE

CLAIMANT

And

THEODORA FORDE

DEFENDANT

Appearances :

Mr. Emery Robertson Snr. for the Claimant;

Mr. Parnel R. Campbell Q.C. for the Defendant, with him Ms. Mandela Campbell.

2017: October. 11

ORAL DECISION

[1] **Henry, J.:** Having listened to the testimony of Ms. Wilson, I am, in a position to render an oral decision today. It was not my intention to comment at any length or to make observations regarding the affidavit of service filed by Mr. Elroy Samuel the Bailiff on the 26th of July, 2004. However Mr. Robertson learned counsel has raised it and it is very important for me to address it in this decision.

[2] This is the decision: I wish to thank counsel for complying with the order of the court made on the first occasion for the filing of your written submissions; which I consider on both sides to be very helpful. I wish also to deal frontally with the issue of why we had to conduct the *voir dire* today.

[3] The endorsement on the case file from the 24th of July, 2017 gives the necessary background and for that reason I will read it. The claimant was represented by Mr. Emery Robertson Snr. the claimant was present, the defendant was absent. The defendant on that date was represented by Mr. Parnel Campbell Q.C. with Ms. Mandela Campbell.

[4] It was ordered:

'In the absence of proof of service of the claim form on the defendant and whereas learned Queens Counsel Mr. Parnel R. Campbell has represented to the court that:

(1) He has never met the defendant personally.

(2) He acted on behalf of the defendant based entirely on representations made towards him by one Leatha Wilson, who said she was the defendant's sister.

(3) He was last in contact with Leatha Wilson in 2008, at which time she indicated that she was travelling between the State of St. Vincent and the Grenadines and Trinidad and Tobago for medical attention. And whereas the affidavit of service of Elroy Samuel of the claim form and the statement of claim on the defendant does not indicate how he identified her as required by the CPR 2000.'

It is ordered:

(1) The claimant is required to file and serve proof of service of the claim form on or before 22nd September 2017.

(2) Adjourned to a date to be fixed by the Registrar in October, 2017 in the New Law Year.

(3) Claimant has carriage of this order which must be filed on or before the 31st July, 2017.

[5] The affidavit of Elroy Samuel which was filed on the 26th of July, 2004 reads:

'I Elroy Samuel of Cedars Bailiff of the High Court of Justice do make oath and say as follows:

(1) I did personally on 2nd day of July, 2004 at Union Island serve Theodora Forde of Ashton Union Island with true copies of a claim form with statement of case attached, an Acknowledgement of Service of a claim form, a defence, a notice of application and an affidavit in support of application which appeared to me to be regularly issued out of the High Court of Justice Kingstown St. Vincent.

(2) At the time of the said service of the aforesaid documents, I read the contents to her and left copies of the said documents with the said Theodora Forde.

(3) The facts deposed to herein are true to the best of my knowledge, information and belief sworn to at the Registry Kingstown this 23rd day of July, 2004.

Elroy Samuel.'

[6] If the testimony of Ms. Leatha Wilson which she gave today is to be accepted, Mr. Samuel was not being truthful when he said that he served those documents on Theodora Forde. The submission for the claimant and the defendant is that they would wish the court to accept the testimony of Leatha Wilson. Having heard her, I have formed the view that she is credible, she was frank and her testimony is accepted as being credible. It stands in stark contrast to the affidavit evidence of then Bailiff Elroy Samuel and in this respect the court notes that the affidavit of service does not comply with all of the requirements of CPR 5.5 which requires that the process server prove by affidavit sworn stating:

'The precise manner by which the person on whom the claim form was served was identified'.

[7] There was no statement in the affidavit as to how Bailiff Elroy Samuel identified the defendant Theodora Forde. That information having been brought to the court's attention on the 24th of July, and in the absence of the defendant Theodora Forde, in the absence of Leatha Wilson, who on her evidence and on the evidence of learned Queens Counsel Mr. Campbell, signed the Acknowledgement of Service as agent for Theodora Forde. The court could not very well turn a blind eye, proceed to a summary trial in the absence of the defendant C in the absence of her stated agent and enter Judgment for the claimant. That would have been unjust to the defendant and is not countenanced by the rules. It is not countenanced by any decision of which this court is aware.

[8] In the circumstances, the court has proceeded on a *voir dire* and as it turns out former Bailiff Mr. Elroy Samuel was not present. He did not give any testimony and so the court is unable to make a finding conclusively beyond, reasonable doubt that he was not being truthful. But the burden on which the court operates in civil matters is on a balance of probabilities. The court is very mindful that Mr. Samuel was not present but it accepts the testimony of Ms. Leatha Wilson, with respect to what happened which caused former Bailiff Mr. Samuel to attest as he did in his affidavit. That is a matter which the relevant persons within the administration of justice need to look into.

[9] As I understand it, Mr. Samuel still continues to serve documents on behalf of litigants in the court. If in fact he was not being candid in his affidavit as I believe he was not, then the court must take steps to ensure that no other court finds itself having to conduct a *voir dire* to determine whether or not a process server truthfully attested to the fact of service personally on another individual.

[10] Accordingly I am directing that this oral decision be made available to the Registrar of the High Court; that the High Court conducts inquiry into the veracity of the statements contained in the affidavit of service of Elroy Samuel. And that all necessary steps be taken to suspend Mr. Elroy Samuel from continuing to provide process server services within the jurisdiction of the Eastern Caribbean Supreme Court, until and unless satisfactory resolution has been arrived at with respect to what transpired when he swore this affidavit, in my opinion untruthfully, that he did serve on Theodora Forde.

[11] Having accepted the compelling testimony of Ms. Leatha Wilson I am satisfied as she has testified, that she had her sister Theodora Forde's authority, to act on her behalf as agent in this matter to give instructions to learned Queens Counsel Mr. Campbell and that her sister had no objections and in fact authorized her to take all the steps that she took in this matter to bring it to the stage that it is.

[12] In the circumstances the order which was made that unless the claimant provided proof of service of the claim form, the claim will be struck out, there is no need for the court to take that very serious step because the court has now been provided with testimony that the person who signed the acknowledgement of service Ms. Leatha Wilson, did so with the full authority of the defendant

Theodora Forde and that every step that she took in this matter including providing affidavit testimony was done with the defendant's concurrence and with her authority.

[13] In the circumstances, no order is made to strike out the claim form and the statement of claim, it is ordered:

- (1) The Registrar is to fix a date for trial of this matter in the month of November, 2017.
- (2) The Registrar is to issue notice of trial date to the parties at least (7) days in advance with proof of service.
- (3) The defendant has carriage of this order.

Esco L. Henry

HIGH COURT JUDGE

By the Court

Registrar