IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2015/0049

IN THE MATTER OF THE ESTATE OF ISHMAEL JAPAL, DECEASED

AND

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF ISHMAEL JAPAL, DECEASED

AND

IN THE MATTER OF LETTERS OF ADMINISTRATION IN THE ESTATE OF ISHMAEL JAPAL, DECEASED

BETWEEN:

KIM JEANPIERRE JAPAL
PAULINE JAPAL-DONALDSON
AMANDA JAPAL

Respondents/
Claimants

and

URMILA JAPAL

Applicant /
Defendant

Appearances:
Ms. Linda Dolland for the Respondents /Claimants
Mrs. Venescia Francis-Banfield for Applicant /Defendant

2015: October 15
2016: May 3

JUDGMENT

[1] **ADRIEN-ROBERTS, J.:** On 6th May 2015, Astaphan J. ordered inter alia that:

(1) All of the assets of Ishmael Japal, deceased are frozen, save and except for those expenses that are necessary to maintain the assets.

(2) The Claimants are to provide an account of all assets of the deceased in the UK and elsewhere including the rental income at 28 Baxter Road.

(3) The Defendant is to provide an accounting of the estate of the deceased together with documentary evidence supporting such accounting.

(4) The accounts to be filed at the court within 21 days of the date of this order;

(5) Any expense of the Estate as aforesaid is to be approved by this Court.

[2] By way of a without notice application dated 17th August 2015 supported by affidavit of even date, the Applicant/Defendant Urmila Japal who is the Personal representative of the estate of Ishmael Japal, deceased, applied for an order that the Estate of the deceased (Ishmael Japal) do pay her expenses for the administration of the estate and the registering of a caveat in the United Kingdom.

[3] The germane ground stated in the application is that she had incurred the expenses as a result of the administration of the estate in the United Kingdom. In her affidavit in support of the application she deposes, as elucidation of the said ground, that she had instructed solicitors in London to have the original Grant (a Grant of Administration that she obtained in Grenada) resealed in the UK, to enter a caveat in her favour in the High Court of Justice Family Division and to extend the caveat for a further six months when the first had expired.

[4] The Applicant/Defendant stated further that the Respondents/Claimants had opposed the filing of the recent caveat (in the UK) on the ground that the deceased had made a will. She is challenging the alleged will. The solicitor's fees are £2000 of which sum she has already paid £1160 leaving a balance owing of £840. The amount claimed is substantiated by an invoice which she exhibited to the affidavit.

[5] The items of the invoice are:

"Re: Litigation Bill" and for "Professional Charges" billed at £300 per hour"

And particularized as:

"Receiving your instructions to act for you in connection with your husband's estate in the United Kingdom up to 11th May 2015; preparing an application to register a caveat in your favour; writing to your stepdaughters for information about the estate; receiving correspondence from their solicitors and responding to the same; writing Stennett and Stennett solicitors to obtain full details of their instructions for your husband's will; reporting to you and then responding to the correspondence; receiving copies of the pleadings and court documentation from Grenada and considering the same; receiving an appearance from Leeds probate court and preparing a response on your behalf and submitting the same within the deadline; preparing a renewal application for the caveat."

[6] Upon directions of the Court the application without notice was served on the Respondents/Claimants and the application was heard *inter partes*each part relying on their filed written submissions.

[7] The Applicant/Defendant submits that she would be greatly prejudiced if the expenses are disallowed as she would not be able to maintain the estate of the deceased and defend the action in the United Kingdom.

[8] The Respondents/Claimants opposes the application for the following reasons:

(1) The payment of legal expenses for the administration of the deceased's estate and for the registration of the applicant's caveat will be inequitable and is tantamount to an order of costs prior to the determination of legal proceedings;

(2) The order of Justice Thomas Astaphan, Q.C dated 2nd March 2015, does not extend to permit the payment of legal expenses of the parties;

(3) Denying the application does not prejudice the applicant's position in that she is still able to recover these costs or be indemnified by the Estate at the determination of the instant matter, should she ultimately be successful.

[9] The issue to be determined by the Court is whether the expense claimed, to wit, expenses incurred in the United Kingdom falls within the genus of expenses that are "necessary to maintain the assets".

[10] Letters of Administration in the estate of the late Ishmael Japal was granted to the Applicant/Defendant, his widow, by the Supreme Court of Grenada. The Respondents/Claimants allege that the deceased left a will and so they filed the instant claim praying for inter alia orders that the Letters of Administration granted to the Applicant/Defendant be revoked and that the alleged will be proved. The Respondents/Claimants herein are also instituting proceedings against the Applicant/Defendant in the United Kingdom.

[11] The estate of the deceased comprises money and property in Grenada and the United Kingdom. The Applicant/Defendant states that the funds in Grenada which formed part of the estate of the deceased have been depleted having been used to settle funeral expenses and the balance divided between Respondents/Claimants and then herself.

[12] The "expenses for the administration of the estate and the registering of a caveat in the United Kingdom" which the Applicant/Defendant seeks to recover are essentially her solicitor's legal fees. These legal fees by their very nature cannot be described as expenses incurred to maintain assets. They are fees paid to the solicitor for services. I see no direct and immediate link between the solicitor fees and the maintenance of the estate's assets.

[13] I examined the particulars of the fees as detailed on the invoice and again I could not find a nexus between the fees and the assets of the deceased. The services provided by the solicitor for which the invoice pertains shows no link with the assets of the deceased and the affidavit in support of the application do not condescend to particulars of these fees.

[14] In both the grounds of the application and the affidavit in support the Applicant/ Defendant avers to the expenses as administration expenses and in particular states that giving instructions to her solicitors to reseal the grant in the UK but this is not reflected in the invoice. The services described were not expended for the maintenance of the deceased's assets.

[15] The Applicant/Defendant is the personal representative of the deceased and has a legal responsibility until that grant is revoked to administer the estate. Expenses incurred in the administration of the estate are recoverable though not as costs as alluded to by counsel for the Respondents/Claimants and accordingly the expenses which the Applicant/Defendant seeks to recover may be recovered.

[16] For the reasons advanced above I refuse order prayed in this application that the expenses incurred by the Applicant/Defendant be paid from the assets of the deceased and award costs in the sum of $500.00 to the Respondents/Claimants, such costs to be costs in cause.

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Wynante M. Adrien-Roberts
High Court Judge