

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2009/0426

BETWEEN:

MITCHELL ACHAM

Claimant

AND

WALTER E. ACHAM

Defendant

Appearances:

Mr. Vere Bird III for the Claimant

Mr. J. Martin for the Defendant

2015: February 14
February 19

JUDGEMENT

- [1] **Cottle, J.:** Alphaeus Acham devised the residue of his estate to his sister Sarah D. Lake. There were two provisos to the gift. Firstly the "Wesson" Estate was not to be "sold, transferred or alienated out of the Acham family or the Lake family to the extent of the two sons of my sister to wit: Gerald H. Lake and Oscar D. Lake" and secondly the two nephews of the testator, Oscar Lake and Walter Acham were to be managers of the Wesson Estate. The Wesson Estate formed part of the residue of the testator's estate.
- [2] Oscar Lake and Walter Acham were named as co-executors. Oscar Lake refused to act as manager of the estate. Walter Acham has been acting as manager. The claimant is a brother of

the defendant. He is a member of the Acham family. He brings the present claim to compel the executor to distribute the estate in accordance with the will.

- [3] This entire claim turns on the interpretation of Clause 10 of the will or rather the two provisos to the residuary clause.
- [4] Counsel for the claimant says that provisos are conditions precedent.
- [5] It is common ground that Oscar Lake has refused to act as manager of Wesson Estate. The effect of this failure of a condition precedent is that the gift of the residue fails with respect to Wesson Estate, counsel for the claimant submits. As a consequence, he goes on, Wesson Estate now falls to be vested in the members of the Acham Family.
- [6] With respect to counsel I could see no reason to separate Wesson Estate from the rest of the residuary estate. If counsel is correct then all residuary gifts fail as they are all subject to the same conditions precedent.
- [7] The Learned authors of Williams on Wills at pp 344-346 offer useful guidance:

“Conditions **precedent or subsequent**. A condition is always either precedent or subsequent to the vesting of the interest given by the will, and whether it is a condition precedent or subsequent is determined by the construction of the will. If, upon the proper construction, there is no gift intended until the condition has been fulfilled, the condition is a condition precedent. Where a gift is contingent on an event, and until that event does take place there is no vested gift, the condition is a condition precedent. For a condition to be subsequent the gift must already have vested and the condition is intended to put an end to the gift. Where it is doubtful whether a condition is a condition precedent or subsequent, the court leans towards a construction which will hold it to be a condition subsequent, for that construction will lead to the early vesting of the gift and there is always a presumption in favour of early vesting. If the condition is void and is a condition

precedent, the gift fails, but in the case of a condition subsequent the effect of the condition being void is that the gift takes effect free from the conditions."¹

- [8] In my view, upon a proper construction of the clauses in issue, the conditions are clearly conditions subsequent. I find that the gift to Sarah Lake takes effect free from the conditions.
- [9] Additionally, had it been necessary I would have held the provisos to be void as repugnant to the interest already given to the beneficiary.
- [10] It is also worth pointing out that whether the Court concluded that the provisos were conditions precedent or subsequent mattered little to the claimant. Upon no construction of the clause is it a gift to the Acham or Lake Family. The claimant is simply not a beneficiary. He has absolutely no interest in approaching the Court to have the executor act. The claim is dismissed. The claimant will pay the defendant's prescribed costs in the sum of \$7,500.00.



Brian Cottle
High Court Judge

¹ Williams on Wills
8th Edition
Butterworths Law (2002)