IN THE EASTERN CARIBBEAN SUPREME COURT

IN THEHIGH COURT OF JUSTICE

COMMONWEATH OF DOMINICA

DOMHCV2010/0124

REGISTRAR GENERAL'S OFFICE
PM 2:50
10 FEB 2015
FILED
COMMONWEALTH OF DOMINICA

BETWEEN:-

MONA JOHNSON

Claimant

And

MICHAEL SIMPSON ROBERTS
(As Administrator Pendente Lite and in person)

Defendant

APPEARANCES:

Mrs Heather Felix Evans with Mr Douglas Murdock for the Claimant
Mrs Noelize Knight Didier of Harris and Harris for the Defendant

2014: November 28th, 29th
2015: January 28th

JUDGEMENT

[1] **STEPHENSON J:** Mrs Mona Johnson (the Claimant) seeks a declaration that she is the sole beneficiary of the Estate of Martina Sylvester deceased *(hereinafter referred to as "Martina's estate')* under the Intestates' Estates Act[1] (hereinafter referred to as the "IEA", and that she is solely entitled to inherit the said estate.

[1] **Chapter 9:03 of the Revised Laws of Dominica**

[2] The Claimant claims that she was unofficially adopted by the deceased Martina Sylvester *(hereinafter . referred to* . as *Martina)* and was wholly maintained by and acknowledged as Martina's issue and she is asking the court to declare that by virtue of Section 2 of the IEA2 she is an issue of Martina without an Adoption order.[3]

[3] Should the Claimant prevail in her claim that she is the beneficiary of Martina's Estate, she also seeks the following orders from the court:

- *(i)* An order for recovery of rent collected by the Defendant from October 2008 to date of judgment *(For property which Martina inherited from her aunt)*
- *(ii) An order for the removal or withdrawal of the caveat from the certificate of title in respect of 125 Bath Road,* Roseau *and an order to restrain the Defendant from interfering with said property and the tenants therein;*
- *(iii) An order revoking the existing limited grant to the Defendant and giving* a *new general grant to the Claimant;*
- *(iv) An order to restrain the Defendant from interfering with or trespassing on the property of the deceased located in Co/ihaut;*

[4] This claim is filed against the Defendant who is Martina's nephew personally and in his capacity as administrator of Martina's estate.

[5] Mr Michael Simpson Roberts strenuously opposes the Claimant's claim. He denies that the Claimant is entitled to be a beneficiary of Martina's estate as she claims or to any of the orders that she seeks. He is also asking this court for:

- (i) A declaration that he is the only person entitled to Martina's estate and that the Claimant is not an issue of Martina Sylvester under the Intestate Estate Act[4] or at all;
- (ii) An order that the Claimant gives an account of her administration of the estate of Ismanie Joseph;
- (iii) An order that the certificate of title in respect of the property located 125 Bath Road be transferred to him or alternatively to the joint names of the Claimant and himself or alternatively that it be partitioned by sale and the proceeds be distributed between him and the Claimant.[5]

Background

[6] Martina Sylvester died on the 5th August 2005 intestate. She had no spouse or biological children at the time of her death.

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[2] **ibid**

[3] See Paragraph 10 of the Statement of Claim filed on the 30th April 2010

[4] Op cit

[5] See Defendant's Counterclaim filed on the 3 June 2010

[7] The Claimant is the biological daughter of Mr Philbert George and Evana Betenez who were never married to each other. Philbert George i_s Martina's first cousin. ,

[8] The Defendant is the son of William Roberts who is Martina's brother. He was born in Barbados and brought to Dominica as a young child and he lived in Colihaut with his grandmother Julianne Roberts and Martina.

[9] When the Claimant was four months old she went to live with Martina and she lived with her up until she was 30 years old when she migrated to the United States of America.

[1O] Martina was a school teacher who taught throughout the island and took the Claimant with her wherever she went to live and teach.

[11] lsmanie Johnson who was Martina's aunt died in 1982 and she bequeathed her property located at 125 Bath Road solely to her niece Martina. The Defendant managed the said property on behalf of Martina whilst she was still alive. He would collect the rents and deposit the monies into an account in the joint names of Martina and the Claimant, which account is currently held in the names of the Claimant and her daughter.

[12] During her lifetime, Martina successfully sued the estate of her ex-husband for a share in the former Matrimonial home located in Bioche which decision was appealed. Whilst the matter was still pending, Martina died and the Defendant, with the consent and concurrence of the Claimant, applied for and was granted Letters of Administration to Martina's estate. The Claimant contends that it was with the specific purpose to continue her (Martina's) defence of the appeal. The Claimant claims that the Defendant took control of and intermeddled in the estate.

[13] There was an arrangement whereby the Defendant collected the rents for the property in Bath Estate and managed the said property for Martina and thereafter for the Claimant and in October 2008, the Defendant stopped depositing the rents collected from the said property into the bank account as was the arrangement during Martina's life. This was after the Claimant informed him that she arranged to have someone else manage the property. The Claimant also applied for and obtained Letters of Administration to the estate of lsmanie Joseph and had the property at Bath Road transferred to her as Administrator. The Defendant later filed a caveat against the said title.

[14] The Claimant then served a notice to quit on the tenant of the Bath Road Property and asked the Defendant to account for the rent he collected and did not deposit into the bank as he did previously and to account for the said monies.

[15,] The Defendant on the other hand wrote to Theresa Groton[6] who acted as the Claimant's agent for the property at Colihaut demanding the keys, to and possession of the said property.

Issues

[16] Based on the submissions of Counsel on both sides of the case at bar, there are a number of issues to be decided, but before I could address those issues I would first have to determine the question of fact as to whether Mrs. Mona Johnson the Claimant, has established that she was considered a "child" or "issue" or "child or other issue" of Martina Sylvester deceased.

[17] Depending on my finding of fact, the issues that would then arise to be resolved would be:-

(a) Whether the Claimant falls within the definition of "child" or "issue' or "other issue" as stated in section 2 of the IEA.

(b) If the answer to (a) is yes then, is the Claimant solely entitled to the estate of Martina Sylvester?

(c) If not, is she and the Defendant equally entitled to benefit from the said estate;

(d) Whether in the circumstances of the case, the Claimant is entitled to receive an account of the assets of the estate of Martina Sylvester from the Defendant who has obtained Letters of Administration and who is consequently the Administrator of Martina's estate;

[18] On the other hand if the Court finds that the Claimant is not entitled to benefit from Martina's estate or is not an issue within the meaning of the IEA, then the issues to be resolved would be:

(a) Whether the Defendant is entitled to a declaration that he is the sole person entitled as the beneficiary of Martina's estate;

(b) Whether as the beneficiary of Martina's estate the Defendant is entitled to receive an account of the administration of the estate of Ismanie Joseph deceased from the Claimant

(c) Whether the land held in Certificate of Title H18 Folio 48 should be transferred to the Defendant (as Administrator of Martina's estate) or alternatively into the joint names of the Defendant and the Claimant or be partitioned by sale and the proceeds be distributed between them.

The status of the Claimant

[19] This entire case turns on the preliminary issue or initial factual finding as to the status of Mona Johnson, whether or not she was held out or considered as Martina's child without being adopted and thereafter the due consideration would be given as to whether or not she comes within the definition of "child or issue" as stated in the IEA.

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[6] Theresa Groton was named as the Second named Claimant in the matter but was struck out as a party to the matter on the first day of trial.

The Evidence, Coyrt's Analysis and conclusions on the issue as to whether the Claimant was accepted and presented by Martina as her child.

[20] Mona Johnson, the Claimant, Theresa Groton, Athenia Ravariere, and Philbert George gave evidence on behalf of the Claimant and Mr Michael Simpson Roberts and Daniel Groton testified on behalf of the Defendant.

[21] I had the opportunity to carefully observe the witnesses as they testified during the trial and was able to assess their credibility and reliability. I have also paid careful consideration to the submissions of both Counsel in support of their cases. It is important that I arrive at a conclusion that is based on all of the evidence adduced.

[22] The proper test to be applied in this case is, that I have to be satisfied on the balance of probabilities and the onus of proof falls on the Claimant. In coming to my decision I have considered whether or not there is sufficient evidence which is required to satisfy the requirement of the balance of probabilities. Is the evidence which has been adduced cogent, credible and sufficient to establish that, during her lifetime, Martina acknowledged and treated the Claimant as her daughter?

[23] As it regards the degree of cogency required to discharge the legal burden in a civil case Lord Denning in the case of **Miller -v- The Minister of Pensions**[7] stated that

> "... *it must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*"[8]

[24] I must be satisfied on a balance of probabilities that Martina, during her lifetime, acknowledged, treated and accepted the Claimant as her daughter. In this regard I therefore propose to examine the evidence that was led on behalf of the Claimant. The Claimant's case is that as an infant she went to live with Martina and was treated as and always held out as her daughter.

[25] Her contention was supported by her witnesses and also by the Defendant who never denied that the Claimant lived with Martina but the Defendant contends however, that the Claimant was not held out as Martina's daughter.

[26] I have listened to all of the witnesses in this matter and I have had the opportunity to look at their demeanor when they testified and I was able to see how they stood up to cross examination.

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[7] **[1947] 2 All E R 372**

[8] ibid at page 374

[27] Mrs. Mona Johnson struck the court as an honest, straight forward and truthful witness. Her evidence was credible and reliable. The Claimant stated that as an infant she went to live with Martina and continued to do so until she was thirty years old and migrated to the United States of America having been filed for by her father. I accept that throughout her life here in Dominica the Claimant lived with Martina and moved from place to place with her. There is no doubt in my mind that Martina thought of the Claimant as her daughter. This is by no means a strange phenomenon as it is known in our communities that oftentimes persons take young children into their homes and accept them, consider them and treat them as their own. I have come to the decided view that this is what happened with the Claimant.

[28] . Her claim was supported by the evidence of her father who never denied that he was her father and that yes, he did file for her to go to the United States of America and that he knew who her biological mother is and he wrote her name down on the application as her mother when he sponsored his daughter. However, Mr. Groton spoke of the Claimant living with Martina from her infancy and that he used to visit her there. He spoke of never having to support her and I accept his evidence. To my mind, his evidence in no way takes away from the fact that Martina took the Claimant in as an infant and brought her up and held her out as her own daughter.

[29] Mrs. Ravariere who is Martina's niece and the Defendant's first cousin told the court about the Claimant living with her aunt since she was an infant and that the Claimant moved around the country with Martina as she lived in the various districts to which she was appointed as a teacher.

[30] Mrs. Ravariere also spoke about the Defendant; that he in fact lived with his grandmother and like her, he visited Martina from time to time. I also accept her evidence in this regard.

[31] The Defendant accepted that the Claimant lived with Martina but was adamant that she was not regarded as or held out as Martina's daughter. I do not accept his evidence in this regard. I also do not accept his evidence that he also lived with Martina. I believe that he was brought to Dominica from Barbados as an infant and lived and was brought up by his grandmother. I do believe that he spent some time with his Aunt Martina when she lived away from her mother's house but that he was a part of his grandmother's household of which his Aunt Martina, was at some point in time, also a part of. I do not accept that the Defendant lived with Martina and the Claimant all of the time as he sought to have this court believe.

[32] While there were a few inconsistencies in the evidence of the witnesses for the Claimant, those inconsistencies in no way undermine the credibility of the witnesses.

[33] I had the opportunity to observe Mr Daniel Groton as he gave his evidence on behalf of.the Defendant and as he was cross examined. It was very clear to me that he was neither forthright nor candid in his evidence when he .sought to give the impression that the Defendant lived with Martina and was brought up by Martina an_d that she (Martina) never considered or held out the Claimant as her daughter. I am unable to accept the evidence of this witness.

[34] Accordingly there is an abundance of evidence in fact, I would say that there is overwhelming evidence on which it can be properly concluded that Martina· took the Claimant into her home as an infant and brought her up as her daughter and held her out as such to all and sundry. I therefore find as a matter of fact that the Claimant lived with Martina and was considered and treated by her as her daughter.

[35] Having found that as a fact I now turn my attention to the issue of whether or not the Claimant is entitled to the declaration which she is seeking that is, that she is entitled to inherit Martina's estate solely as an issue of Martina. The question is; is she so entitled?

[36] Based on the facts as I have found them, the Claimant is an illegitimate child, that is, she was born of and to parents who were not married to each other. It is clear from the facts that she was not the illegitimate child of Martina. She was not the biological child of Martina. In fact, she was the daughter of Martina's cousin as stated in the evidence. It is noted that the Claimant was never adopted legally or otherwise by Martina. The Claimant is saying that she was an illegitimate child who was accepted by the deceased as her own and was maintained by her and as such she is inviting the Court to find that she falls within the definition found in section 2 of the IEA[9] and is therefore entitled to inherit under the rules of intestate succession.

[37] Section 2 of The IEA says a ...

> *"child" or "issue" includes an adopted child, or an illegitimate child who* has *been accepted* as *his child or issue by the intestate or who* has *lived with or been maintained by the intestate" to*

[38] I am of the view that having found that the Claimant was accepted and held out by Martina as her daughter and that she was an illegitimate child, the crux of the case turns on the interpretation of this section.

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[9] **Op cit**
[10] **ibid**

[39] I shall not rehearse the well-expressed submissions made by Learned Counsel for both parties herein for the sole reason of issuing a well-timed decision in this matter. I am grateful however for their assistance. I must say that I had recourse to all of the documents filed by the parties in coming to my decision.

[40] Counsel for the Claimant, in a nutshell, submits that the words of section 2 of the IEA are clear and unambiguous in that *"child or issue"* in section 2 includes *"an illegitimate child who has been accepted as his child or issue by the intestate".* Counsel for the Claimant submitted that the term "illegitimate child of the intestate" is to be interpreted to include the non-biological child of the deceased. In support of her contention, Counsel urged the Court to conclude that to be a "child or issue" of the intestate under the IEA, the illegitimate child must either have been accepted as his child or issue by the intestate and that the child must have lived with the intestate and must have been maintained by the intestate.[11]

[41] I agree with learned Counsel's submission that upon reading the definition of "child" and "issue" as provided for in section 2 of the IEA, it is clear that the legislator intended to enlarge who can be so considered and to include an illegitimate child who has been accepted as his child or issue by the intestate or who has lived with or been maintained by the intestate. However, can this definition be interpreted or taken to include an illegitimate child who is <u>not the biological child</u> of the intestate who has in fact been taken in by, brought up by and treated as the child of the intestate? Therein lies the issue to be resolved. *(emphasis mine)*

[42] Learned Counsel Mrs. Felix-Evans further submitted that the section does not provide that the illegitimate child must be the biological child of the intestate and that to interpret the reference to illegitimate child accepted by the intestate to mean illegitimate biological child only would be to insert a word into the legislation which is not there, ... which is what courts are discouraged from doing as stated in the case of **Stock -v- Frank Jones (Tipton) Ltd.**[12] where Viscount Dilhorne, in quoting Lord Mersey in **Thompson -v- Goold & Co**[13] said

> *"It is a wrong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity it is a wrong thing to do"*
> and he also had this to say in quoting Lord Mersey in **Vickers, Sons & Maxim Ltd -v• Evans**[14]

[11] See page 9 -10 of the Claimant's written closing arguments filed on the 19th December 2014.
[12] [1978)1 All ER 948 at page 951
[13] (1910) AC 409 at 420
[14] (1910) AC 444 at 445

> *"We are not entitled to read words into an Act of parliament unless clear reason for it is to be found within the four comer$ of 'the act itself"*

[43] Learned Counsel for the Defendant, Mrs. Noelize Knight- Didier, submitted that the Claimant, who is in fact a second cousin of Martina, cannot seek to put herself in the category of "child or issue" as defined and applied by the IEA. Mrs Knight-Didier stated that the Claimant is not a legitimate or illegitimate child of Martina. Counsel made reference to Halsbury's Laws of England Vol. 1[15] which spoke to status of an illegitimate child:

> *"Generally the father of an illegitimate child is not generally recognised by the law of England for civil purposes. He is under no obligation to provide for the child in the absence of an affiliation order, unless he has adopted it de facto or obtained an adoption order '[16]*

[44] Mrs. Didier submitted that it is this mischief which the legislature sought to curb in formulating the definition in the IEA; that it is clear that the definition in section 2 is meant to capture the illegitimate child of the intestate, that is, a child that is the intestate's child but born out of wedlock and not just any illegitimate person who is not the biological child of the intestate.

[45] Learned counsel Mrs. Didier further submitted that to interpret "illegitimate child" to include an illegitimate child who is not the child of the intestate would be an absurd interpretation and for the Court to do so would open the flood gates of so many different types of de facto adoptions since the descriptions in the definitions are disjunctive. Counsel also posed the question what would be the test to amount to sufficiency of acceptance as a child to satisfy the IEA?

[46] Learned Counsel Mrs. Felix Evans submitted that the interpretation of section 2 of the IEA as urged by the Defendant is "restricted or tortured or strained" and to accept that definition would produce "injustice, absurdity, anomaly and contradiction" and should not be accepted by the court.

Court's considerations

[47] It is not an issue of fact in dispute in the case at bar that Martina died intestate and without a spouse or any biological children. It is also not an issue of fact in dispute that the Claimant was born out of wedlock to Philbert George and Evana Edwards.

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[15] 4th Edition page 341

[16] See Paragraphs 33 through 38 of the Defendant written closing arguments filed on the 15 December 2014

[48] I have found as a matter of fact that the Claimant was considered and raised by Marti,na as her child. She lived with her, was acknowledged as such by her and maintained by her. However, can she be considered in law as an illegitimate child within the definition of Section 2 of the IEA thereby entitling her to be a beneficiary of Martina's estate?

[49] An illegitimate child has been defined as "one who is born out of lawful wedlock"[17] Historically, illegitimate children had no real legal rights *to* their parents' estates. They were *"Nul/ius filius"*[18]. However, in the second half of the twentieth century laws were enacted which gave illegitimate children many of the legal rights enjoyed by legitimate children.

[50] Under the provisions of the IEA in Dominica, illegitimate children can inherit upon intestacy from either parent This is in keeping with many Status of Children Acts that exist in the region. It is noted that there is no such legislation here in Dominica. Nevertheless, the issue to be determined in the case at bar is, can a child who has been taken in by and brought up by the deceased who is not of the body of the deceased and who is an illegitimate child by virtue of the fact that her parents were not married be considered an "illegitimate child *who has been accepted as his child or issue by the intestate or who has lived with or been maintained by the intestate" as stated in the !EA.*

[51] Counsel on both sides have informed the Court that no case has been found in support of the position adopted by the Claimant in the case at bar.

[52] In a discussion paper on succession[19] which was the precursor to the paper on succession presented to the Scottish Parliament, there was some discussion on the law and the status of "an accepted child" as it regarded intestate succession. I found this paper of great assistance in making my decision. The committee comprising The Honourable Lord Drummond Young, *Chairman,* Professor George L Gretton, Patrick Layden, QC TD, Professor Joseph M Thomson and Colin J Tyre, QC. stated as follows:

> *"The terms heirs, next of kin, and distributees usually refer to the persons who by operation of law inherit or succeed to the property of* a *person intestate on his or her death. Statutes generally confer rights of inheritance only on blood relatives, adopted children, adoptive parents, and the surviving spouse. Line of descent is the order or series of persons who have descended one from the other or all from* a *common ancestor, placed in* a *line in the order of their birth showing the connection of all blood relatives. The direct line of descent involves persons who are directly descended from the same ancestor, such as father and* son, *or grandfather and grandson. Whethe r an adopted child can be regarded as in the direct line of descent depends upon the law in the particular jurisdiction. The*

[17] **Halsbury's Laws of England op cit paragraph 601**

[18] ***Galloway v. Galloway*** **(1965) A.C. 229, 311**

[19] **[2007] SLC 136 (DP)**

collateral line of descent involves persons who are descended from a common ancestor, such as brothers who share. the same father or cousins who ,have the same.grandfather. Title by descent differs from title by purchase because descent involves the operation of law, while purchase involves the act or agreement of the parties, Usually direct descendants have first preference in the order of succession, followed by ascendants (persons in the collateral line of ascent), and finally, collateral heirs, Each generation is called a degree in determining the consanguinity, or blood relationship, of one or more persons to an intestate.

[53] I am of the view that this is the correct approach to be taken in law and has in fact been the approach to the interpretation of "issue" that there must be some blood connection. In their discussion it is interesting to note that this is what the committee also had to say:

> *"Acceptance of a child by itself does not remove the parental responsibilities and rights from the non-resident biological parent or that parent's obligation of aliment. Therefore treating .an accepted child as* a *child of the accepting adult for the purposes of intestate succession would produce the somewhat odd result that an accepted child would have three "parents", his or her own biological parents and the accepting adult. Indeed, if that relationship ended and the child was subsequently accepted by another adult, the child would end up with four "parents". The accepted child would therefore be in* a *better position than an adopted or biological child. "*[20]

[54] I agree whole heartedly with this statement. In this case at bar from the evidence I have heard, the father of the Claimant still considered her to be his daughter and indeed, based on that relationship, he filed for her as her father allowing her to migrate to and obtain status in the United States of America. It is also noted that her biological mother's name was entered onto the application- a process which further acknowledged the existence of the biological parent. If the Claimant were to be treated as the child of Martina, then she would be in the position as stated by the committee, of having three parents and being able to inherit from all three parents. In other words, to treat the Claimant whose status is that of accepted child, as the child of Martina who was the accepting adult for the purposes of intestate succession, would produce the somewhat odd result that as an accepted child she would have three "parents", her own biological parents and Martina, the accepting adult.

[55] I am of the view that by the law in Scotland and the law in Dominica, as indeed is the law in most countries in the world, the Claimant is an accepted child and does not by virtue of her acceptance become an issue of the deceased, illegitimate or otherwise. I note also that it is trite law that a natural child of a woman is always her heir on intestacy. She has issue, not illegitimate issue. The question of legitimacy only arises in relation to a deceased male, and

[20] Ibid para 2.77

the IEA makes specific reference to the male gender *liar an illegitimate child who has been accepted as **his** **(my emphasis)** child or issue by the intestate.*

Courts Conclusions

[56] Applying the facts of this case as I have found them to the law as I have found it even though the Claimant has established that she was accepted as and held out by Martina Sylvester as her daughter, she was not her biological daughter and neither was she her illegitimate daughter and accordingly she does not fall within the contemplation of the IEA and as such, cannot be considered as an issue of the intestate.

[57] I agree with learned Counsel for the Defendant's submission that the Claimant does not satisfy any of the conditions set out in IEA, Adoption of Children Act,[21] or the Non-Contentious Probate Rules 1954 (incorporated in Dominica by virtue of section 11 of the Eastern Caribbean Supreme Court Act22.

[58] In view of these premises I find that the Claimant has no *locus standi* to bring these actions or claims against the Defendants and her claim is therefore dismissed.

The Counterclaim

[59] Since I have determined that the Claimant is not "an issue" within the meaning of the IEA and has no *locus standi* to bring her claim, I must now turn my attention to the Defendant's counterclaim.

[60] Learned Counsel Mrs. Knight-Didier quite correctly and professionally conceded that the Defendant, being one of the many nieces and nephews, is not the only beneficiary to Martina's estate.

[61] Based on the evidence adduced at trial in this case, Martina died after her siblings, she died without issue and according to sections 5(1) and (3) of the IEA, her estate would fall to be inherited by the children of her brothers and sisters. Therefore, Martina's nieces and nephews who include the Defendant and the witness, Mrs. Athenia Ravariere stand to inherit her estate in equal shares. It is noted that the Defendant said in his evidence that he had five surviving brothers and sisters and Mrs Ravariere said that she is the daughter of Martina's brother and

[21] Chapter 37:03
[22] Chapter 4:02

her father had nine children so, therefore, it is safe to say that there are fourteen other persons who are entitled to inherit Martina's estate based on the provisions of the IEA.

[62] Mrs. Knight-Didier submitted that pursuant to the provisions of the Rule 21 of the UK Non - contentious Probate Rules 1954 which states:

> *"the persons having a beneficial interest in the estate of the intestate shall be entitled to a grant of administration in the following order of priority namely ...*
>
> ***(iv)*** *Brothers and sisters of the whole blood or issue of any deceased brother or sister of the whole blood who has died ..."*[23]

The Defendant is therefore entitled to the grant which he has already obtained for the estate of Martina Roberts.

[63] The Defendant is also seeking an account from the Claimant of the estate of Ismanie Joseph. Ismanie Joseph died in 2008 intestate and on the 12th December, 2008, the Claimant obtained a grant of letters of administration to her estate on the ground that she was an issue of the deceased and beneficiary of the estate.

[64] In her oath of Intended Administrator, the Claimant described herself as being "the lawful issue of the deceased through her adopted mother Martina Sylvester deceased and the only person entitled to the estate of Ismanie Joseph[24]". Having found that the Claimant is not an issue of Martina Sylvester as she contends, it is therefore clear that she is not entitled to apply for and obtain Letters of Administration for the estate of Ismanie Joseph and accordingly, she will be required to give account of her dealings with that estate to whoever is found to be the beneficiaries of the said estate.

[65] I decline to order the revocation of the grant even though invited to do so by Counsel for the Defendant as this relief is not specifically prayed for in this matter. An application will have to be made by a person or persons so entitled under the provisions of the Non Contentious Probate Rules.[25]

[66] The Defendant also sought an order that the land held in Certificate of title Folio 48 be transferred to him or in the alternative to the joint names of him and the Claimant or be partitioned by sale and the proceeds be distributed between them. As was stated before, Ismanie Joseph died intestate without issue. There is no evidence or application before this court as to who are the beneficiaries of her estate. The only thing that I can say on this matter at the moment, as I stated before, is that the Claimant is not entitled to the grant of Letters of

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[23] **Op cit.**

[24] **Paragraph 5 of the Oath of Intended Administrator filed on the 12 December 2008 (page 17 of the Supplemental** trial **bundle filed on the 26 November 2014)**

[25] **Op cit.**

Administration 011 the basis which she obtained them. Accordi11gly, I decline to make the order sought.

[67] As such, there is no declaration to be made in favour of the Defendant as prayed. Even though the Claimant may be required to give an account of her administration of the estate of Ismanie Joseph, there is no evidence before the court upon which an order in this regard could be given. The Counterclaim is therefore dismissed.

[68] There is no order as to costs in this matter as neither party was successful in their claim.

[69] It shoutd be noted tha1: at Ile outset of the hearing of Ute Mal, I urged the parties to consider settling this matter and once again I urge them to still consider doing so.

[70] I acknowledge and commend both Counsel for their conduct in this matter and their assistance rendered to the court.

ORDER ON THE CLAIM

1. The Fixed date claim form filed by the Claimant herein on the 30th day of April 2010 be and is hereby dismissed.
2. No order as to costs

AND ON THE COUNTERCLAIM

3. The Counterclaim filed on the 3 June 2010 be and is hereby dismissed.
4. No order as to costs.

M Birnie Stephenson
Hig Court Judge