

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(PROBATE)**

CLAIM NO: ANUHPB 2010/0123

IN THE ESTATE OF ENRICO JULIAN, DECEASED

Appearances:

Mr. Kendrickson Kentish for the Caveator
Mr. Dexter Wason for the Executor

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2011: May 13
June 24
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RULING

- [1] **MICHEL, J.:** Enrico Julian (hereafter referred to as "the Deceased") was a police officer who died at the Mount St. John's Medical Centre on 18th March 2010 at the age of 51.
- [2] On 10th April 2010 a Notice dated 8th April 2010 was published in the Antigua Sun Newspaper stating that application will be made to the High Court by Cumberbatch & Associates, as Solicitors for Paulette Julian, for a grant of probate of the Will of the Deceased.
- [3] On 11th June 2010 an application was filed in the office of the Registrar of the High Court for an order that probate of the Last Will and Testament of the Deceased be granted to Paulette Julian, as the sole executor named in the Will of the Deceased and the only person entitled to the Estate. The application was accompanied by a document entitled

"Last Will and Testament of Enrico Julian" and a copy of the Marriage Certificate of the Deceased to Paulet Galloway. Also filed on 11th June 2010 were an Oath of Executor sworn to by Paulette Julian on 4th May 2010 and Affidavits of Execution and Affidavits of Attesting Witness by Wyndham Andrews and Paulette Dowdie as the subscribing witnesses to the Will of the Deceased. The application was also accompanied by a draft order for grant of probate.

- [4] On 12th October 2010 a caveat was entered against the sealing of a grant of probate in the Estate of the Decased without notice to Colette Richards, the mother of one Enrico Julian Jr. Notice of the caveat dated and filed on 12th October aforesaid was given to Paulette Julian.
- [5] On 29th November 2010 a Warning to Caveator was filed on behalf of Paulette Julian, notice of which (dated and filed on 2nd December 2010) was given to Collette Richards by the Registrar's Office.
- [6] On 17th December 2010 a Notice of Application was filed on behalf of Collette Richards as the mother and next friend of Enrico Julian Jr., alleged by her to be the son of the Deceased, for directions (1) for the continuance of the life of the caveat filed by her on 12th October 2010 and (2) for the just disposition of the probate action between the Caveator and the person claiming to be entitled to the grant of probate. The grounds of the application were as follows:
 - 1. The Deceased lacked the mental capacity to execute a Will on or about 16th March 2010;
 - 2. The Deceased did not know and approve of the contents of the Will purported to be executed by him on or about 16th March 2010;
 - 3. The said Will was executed in suspicious circumstances, namely, at a time when the Deceased was hospitalized and being treated for kidney failure and related ailments with pethidine, which is an opiod analgesic drug known to cause sedation and dizziness in patients;

4. The said Will is void and of no effect;
 5. The Caveator is the mother and next friend of Enrico Julian Jr., the son of the Deceased, and is one of the persons entitled to a grant of letters of administration in the Estate of the Deceased.
- [7] The Notice of Application was filed together with an affidavit of Collette Richards in support of her application.
- [8] On 4th March 2011 an Affidavit in Reply sworn to by Paulette Julian was filed in the matter in which she deposes that she is the widow of the Deceased to whom she got married in Jamaica on 26th August 2006; that there is one child of the marriage, Jessica Julian, born on 20th March 1999; that she is aware that the Deceased was the father of one Ashaki Julian, who was about 21 years old at the time of the Deceased's death; that the Deceased gave instructions for and executed a Will on 16th March 2010; and that she asks that the Court dismisses the application and the caveat of Collette Richards and order that the Estate be disposed of in accordance with the Will of the Deceased.
- [9] On 8th March 2011 an affidavit sworn to by Mr. Cosbert Cumberbatch, Attorney-at-Law, was filed in this matter in which Mr. Cumberbatch deposed to having received instructions from the Deceased at Mount St. John's Medical Centre on 16th March 2011 and of having prepared the Will of the Deceased which the Deceased executed on that date in the presence of two witnesses.
- [10] The matter came before me on 13th May 2011 whereupon I ordered the parties to file written submissions by 27th May 2011 on the basis of which I will make a ruling on the application by Collette Richards.
- [11] None of the parties filed their written submissions by the date ordered, but written submissions were filed on behalf of Paulette Julian on 30th May 2011 and on behalf of Collette Richards on 6th June 2011. On 9th June 2011 legal authorities were filed on behalf of Paulette Julian.

- [12] The Court accepts the submissions and authorities filed on behalf of the parties and deems them to have been properly filed, even though they were filed late.
- [13] In accordance with section 11 of the Eastern Caribbean Supreme Court Act, Cap. 143 of the Revised Laws of Antigua and Barbuda, where in civil proceedings in probate, divorce and matrimonial causes no special provision is contained in the laws of Antigua and Barbuda, the jurisdiction of the High Court shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice in England. There being no non-contentious probate rules in Antigua and Barbuda, the Non-Contentious Probate Rules of England and Wales are therefore to be applied in the exercise by this Court of its jurisdiction in non-contentious probate matters.
- [14] Rule 44 of the Non-Contentious Probate Rules 1987 of England and Wales makes provision for the entering of a caveat by any person who wishes to show cause against the sealing of a grant of probate and for the issue of a warning against the caveat by a person claiming to have an interest in the estate.
- [15] A caveat was entered in this case by Collette Richards and a warning was issued by Paulette Julian which required the Caveator to enter appearance within eight days, setting forth what interest she has in the estate of the Deceased contrary to that of Paulette Julian, or to issue a summons for directions by the Registrar of the High Court within eight days.
- [16] In response to the warning, the Caveator, Collette Richards, filed a Notice of Application on 17th December 2010 applying for directions for the continuance of the life of the caveat and for the just disposition of a probate action between the Caveator and Paulette Julian.
- [17] The application by the Caveator is in keeping with Rule 44 (6) of the Non-Contentious Probate Rules 1987, which application the Court now addresses.

[18] As to the directions for the continuance of the life of the caveat, it is to be noted that – in accordance with Rule 44 (8) of the Non-Contentious Probate Rules – the caveat remains in force until the disposition of this application.

[19] As to the directions for the just disposition of the probate action, the proceedings have become contentious probate proceedings by virtue of the sealing of the caveat against the grant of probate of the Will of the Deceased and the issue of the warning to the Caveator. The Caveator must therefore institute contentious probate proceedings by issuing a fixed date claim in accordance with Rule 68.2 of the CPR. Leave is therefore granted to the Caveator to file and serve a fixed date claim within one month of the date of this Order challenging the validity of the Will of the Deceased dated 16th March 2010. The caveat entered on 12th October 2010 shall remain in force until the commencement of the probate action, but shall cease to have effect if the fixed date claim is not filed and served by 24th July 2011.



Mario Michel
High Court Judge