

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 258 OF 2009
BETWEEN:



ERIC FENTON OLLIVIERRE

Claimant

v

WYNSTON SHABAZZ O/C

First Defendant

WYNSTON OLLIVIERRE

**Attorney on record for Arnhim Benson Ollivierre Administrator
In the Estate of Claude Ollivierre, deceased.**

ARNHIM BENSON OLLIVIERRE

Second Defendant

Appearances: Mrs. Kay Bacchus-Browne for the Claimant
Mr. Jomo Thomas for the Defendants

2010: May 26th
2011: February 11th

JUDGMENT

- [1] **THOM, J:** Claude Benson Ollivierre died interstate on the 3rd of April 1994. He left surviving him several children including the Claimant and the Second Defendant.
- [2] On the 16th day of November 2005 a grant of letters of Administration in his estate was made to the Defendant Wynston Shabazz attorney on record for Arnhim Benson Ollivierre.

[3] On August 7, 2009 the Claimant filed this Fixed Date Claim in which he claimed that he is a beneficiary in the estate of Claude Ollivierre. The Claimant sought the following reliefs:

- (a) An order for revocation of Grant number 164 of 2005 granted to Wynston Shabazz o/c Wynston Ollivierre attorney on record for Arnhim Benson Ollivierre of Paget Farm Bequia.
- (b) An order for the Defendant to bring in the Grant.
- (c) A declaration that the Defendant are not entitled to destroy the building or land situated at Paget Farm in the State of Saint Vincent and containing three (3) lots more or less and abutted and bounded on the North by lands of Nanton G. Ollivierre and on the West by a six (6) foot right of way or howsoever otherwise the same may be butted distinguished or described TOGETHER with all buildings and erections ways, watercourses rights lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto which forms part of the estate of Claude Ollivierre deceased.
- (d) An injunction restraining the Defendant whether by himself therein after his servants and/or agents from trespassing and or destroying or continuing to destroy the buildings or lands situate at Paget Farm in the State of Saint Vincent and containing three (3) lots more or less.
- (e) In the alternative an order that the following six children of the deceased whom the Defendant left out of the Administrator's Oath as beneficiaries entitled to the estate of the deceased are in fact entitled equally with the other children of the said deceased: Sigbert Ollivierre, Claude Ollivierre, Doreen Gregg, Doreen Ollivierre, Francis Ollivierre and Hobin Kydd.

- [4] On the 4th December 2009 the Defendant filed a defence and counterclaim.
- [5] On the 9th February 2009 the Claimant filed a reply and defence to the counterclaim.
- [6] On the 12th March 2010 the Defendant filed an application to strike out the statement of claim and he also sought summary judgment on the counterclaim on the grounds that the statement of case is frivolous and vexatious and an abuse to process, and the defence to the counterclaim is not in conformity with Part 10.5 of CPR 2000.

SUBMISSIONS

- [7] Learned Counsel for the Defendants submitted that the Claimant's statement of case is frivolous and vexatious and abuse of the process of the Court since:
- (a) the same issues were litigated in Claims No. 131 of 2007 and No. 3 of 2008 and both claims were dismissed. The Claimants are therefore estopped from making their claims. Learned Counsel referred to numerous cases including the case of **Attorney-General v Barker** [2000] 1 FLR 759.
 - (b) the Claimant has no locus standi to bring the Claim to claim reliefs for persons not party to the Claim. Learned Counsel referred the Court to the case of **Deloitte Touche AG v Christopher D Johnson and Another** No 44 of 1998.
 - (c) the Claimant has not produced sufficient evidence to prove paternity as required by the Status of the Children Act. Learned Counsel referred the Court to the case of **David Sampson v David McKenzie**.
 - (d) the defence to the counterclaim does not disclose a defence with a real prospect of success. The Defence is not in compliance with Part 10.5 of CPR 2000 in that it amounts to bare denials.

[8] Learned Counsel for the Claimant submitted that:

- (a) the Defendants are estopped from seeking to have the Claim struck out since they filed a defence to the Claim and further they filed an amended defence to the amended counterclaim which was filed after the application to strike out was filed.
- (b) Pursuant to Part 15.2 of CPR 2000 summary judgment cannot be granted in probate proceedings and proceedings commenced by Fixed Date Claim.

LAW AND ANALYSIS

[9] Part 26 of CPR deals inter-alia with the striking out of Statements of Claim. The relevant section is Part 26.3 (1) which reads as follows:

“26.3(1) In addition to any other power under these rules the Court may strike out a statement of case or part of a statement of case if it appears to the Court that in proceeding:

(a)

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim.

(c) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[10] I will deal first with the reasons the Defendant submitted that the Claimant's statement of case does not disclose any reasonable ground for bringing the claim.

Locus Standi

[11] The Claim was instituted by the Claimant in his personal capacity as a beneficiary of the estate of Claude Ollivierre. He seeks reliefs for himself and for persons who are not a party to the claim. I agree with Learned Counsel for the Defendant that the Claimant cannot claim reliefs for persons who are not a party to these proceedings. The Claimant however also sought relief as a beneficiary of the estate of Claude Ollivierre. These reliefs

are outlined in paragraphs (a) (b) (c) and (d) of the Claim. As a beneficiary of an estate which has not been fully administered the Claimant is entitled to maintain his claim for the reliefs that relate to him. I therefore do not agree with the Defendant that the Claimant does not have locus standi.

Estoppel

- [12] Learned Counsel for the Defendant submitted that the issues raised in the statement of case were already litigated in Claims No. 131 of 2007 and No. 3 of 2008.
- [13] In Claim No. 131 of 2007 no Claim Form was filed. An application by the Claimant for an interim injunction against the Defendant was made prior to the filing of a Claim Form but none was filed after the injunction was granted. The injunction was subsequently discharged.
- [14] In relation to Claim No. 3 of 2008 the parties were the Claimant and Calvert Ollivierre. The Claim was not dismissed as alleged by Learned Counsel for the Defendant but rather an application for an injunction that was made prior to the filing of the statement of Claim was dismissed on the 1st February 2008 due to the non-attendance of the Claimant and his Counsel.
- [15] I therefore do not agree with the submission of Learned Counsel that the issues in the present statement of case were litigated in Claim No. 131 of 2007 and No. 3 of 2008.

PATERNITY

- [16] I do not agree with the submission of Learned Counsel that the Claim should be struck out because the Claimant has not produced sufficient evidence of paternity in keeping with the decision of the Eastern Caribbean Court of Appeal in **Sampson v McKenzie**. In his statement of case a Claimant is not required to adduce evidence to support his claim, see **Eastern Caribbean Flour Mills v Boyea**. The required evidence as outlined by the Court of Appeal in **Sampson v McKenzie** is the nature of evidence that is to be adduced at the trial by way of witness statement and oral testimony.

DEFENCE TO COUNTER CLAIM

- [17] Part 10.5 requires that a defence must state whether allegations in the Claim are admitted, denied or whether they are neither admitted nor denied because he does not know whether they are true and he wishes that Claimant to prove them. Where a Defendant denies an allegation he must state his reasons for doing so and if he intends to prove a different versions of facts then he must outline those facts.
- [18] Having examined the defence to the counterclaim while I agree that the Claimant has not referred to all of the paragraphs in the counterclaim, the Claimant has admitted some paragraphs and denied others. Those paragraphs that the Claimant denied the Claimant has given reasons and has set out on his own version of the facts. I therefore do not agree with Learned Counsel for the Defendant that the defence to the counterclaim amounts to bare denials and does not comply with Part 10.5 and should be struck out. Indeed Part 10.7(1) provides that a Defendant may not rely on allegations or factual arguments not set out in his defence which he could have set out unless the Court grants him permission to do so.

SUMMARY JUDGMENT

- [19] In relation to the application for summary judgment, I agree with the submission of Learned Counsel for the Claimant that pursuant to Part 15.2 of CPR summary judgment cannot be granted in proceedings commenced by Fixed Date Claim or probate proceedings.
- [20] For the reasons set out above the application to strike out the Claim and for summary judgment is dismissed.

[21] It is ordered:

- (a) The application is dismissed.
- (b) The Defendant shall pay the Claimant costs in the sum of \$750.00.
- (c) The matter shall proceed in accordance with CPR.


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Geriel Thom
HIGH COURT JUDGE