

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO: SLUHCV 2007/0031

BETWEEN

BERNADICTE ST. LUCE
Also known as Elsie St. Luce
BERNADETTE WILSON
(nee St. Luce Jean)
PHILOMENE JEAN

Claimants

AND

LUCIANA LEWIS
THE ADMINISTRATOR GENERAL

Defendants

Appearances:

Mr. Winston Hinkson for the Claimants
Mr. Gerard Williams for the First Defendant
Second Defendant not represented

.....
2008: June 3
.....

JUDGMENT

[1] This matter has been decided in favour of the Defendant.

- [2] The testator at his death was a single man never married who had on 5th September, 1997 duly executed his last will and testament which reads in part:

(2)I name constitute and appoint my daughter LUCIANA LEWIS of Paix Bouche, aforesaid, Housewife, to be the executrix of this my will and extend her powers as such executrix beyond the year and a day established by law

(3)

(4)I give devise and bequeath unto my daughter LUCIANA LEWIS the portions of land shown as portions A and B on Plan of Survey by GERALD ST. A. GUARD licenced Land Surveyor dated 25th May 1997 and lodged at the Surveys Office on the 7th August 1997 as Drawing Number DN 892 and recorded as Number 388/97. The said portions of land as registered as Parcel 1449B 232 and a dismemberment of Parcel 1449B 201

(5).....

(6) I make no bequest as regards the remainder of my estate in which case such remainder shall constitute my intestate succession.

- [3] The testator made one other bequest to the first Claimant.

- [4] The Defendant in accordance with her duties as executrix proved the will and was duly granted probate on 21st July 2005, some seven (7) months after the death of the testator. There was no challenge to the validity of the will.

- [5] The Claimants who are the testator's siblings claim that despite being referred to as "my daughter" in the will of the testator, the Defendant in fact was not or is not his daughter. They claim that, as a consequence, the portion of the testator's estate which devolves upon an intestacy must be granted to them as his next of kin.
- [6] While acknowledging that Article 579 of the Civil Code by its amendment sought to render illegitimate children capable of succeeding to their single parent's estate, Counsel for the Claimants argues that in order to be considered a child of the family of the testator, the Defendant must fulfill the requirements of the amendment found in section 3 of the Civil Code (Amendment) (No.3) Act 1991. He further contends that the Defendant having been born in 1958 cannot be "caught" under the amendment whether or not she meets the requirements of the amendment since the legislation is not of retrospective effect but only comes into force on the date of its publication which was 4th January, 1992.
- [7] I might have been persuaded by these arguments were it not for a number of salient considerations.
- [8] The amendment referred to by Counsel for the Claimant as stated is clear and concise terms:

If the deceased being a single man.....dies leaving children hissuccession falls to them...

- [9] An amendment, unless otherwise stated and in certain circumstances, eclipses whatever situation preceded it and thus I hold to be untenable Counsel for the Claimant's view on the non retrospective effect of the legislation.
- [10] A will "speaks" at the death of the testator. This will was executed some five (5) years subsequent to the amendment the consequences of which the testator would be taken to have been made aware by his legal advisers, hence the terms contained in this will.
- [11] Thus the intentions of the testator, clearly signified by his two (2) direct references to the Defendant as his daughter, were that the Defendant was recognized by him and should be acknowledged universally as his daughter, thereby succeeding to the remainder and intestate portion of the deceased's estate
- [12] It is trite law that he who asserts must prove. Apart from the above legal contention which I have discounted, the Claimants have proffered no factual or scientific evidence to prove their claim that the Defendant is not the daughter of the testator.
- [13] In the premises I must dismiss the Claimant's claim with costs to the Defendant in the sum of \$3,000.00.

SANDRA MASON Q.C.

High Court Judge