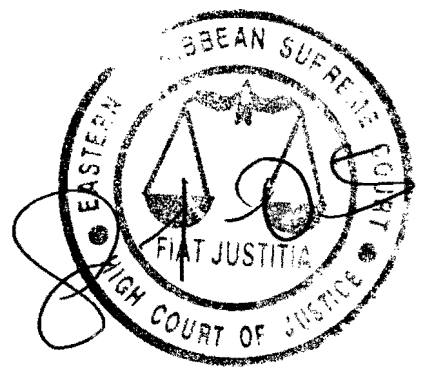




THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO.: 262 OF 2002

IN THE MATTER OF THE STATUS OF CHILDREN ACT CAP 180 OF THE REVISED LAWS OF
SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF AN APPLICATION BY DAVID McKENZIE FOR A DECLARATION OF
STATUS

BETWEEN:

DAVID ADOLPHUS McKENZIE
LYNETTE ANETTE JAMES

Claimants

V

DAVID SAMPSON
(Intended Administrator of the Estate of
ELISHA SAMPSON, deceased)

Defendant

Appearances:

Mr. Stanley K. John for the Claimants
Mr. Richard Williams for the Defendant

2004: May 12th
2005: January 18th

JUDGMENT

- [1] **BRUCE-LYLE, J:** On the 22nd August 1996 Elisha Sampson of Chapmans Village, St. Vincent died. At the time of his death he owned and operated a liquor and grocery shop, and also owned lands and a dwelling house.

- [2] The defendant David Sampson intends to administrate the Estate of Elisha Sampson deceased. He is the nephew of the deceased Elisha Sampson.
- [3] However, the claimants David Adolphus McKenzie and Lynette Anette James claim to be the children of the deceased by virtue of relationships with their respective mothers, Marie McKenzie and Ulnie James in 1956 and 1961 respectively.
- [4] The second named claimant Lynette Anette James withdrew from this matter before it came to trial for religious reasons. The first named claimant therefore pursued the matter to trial. The basis for his claim is to seek declarations:
- (a) that the relationship of father and child exists between the late Elisha Sampson and himself pursuant to the provisions of Section 10 (1) (b) and 10 (2) respectively of the Status of Children Act Cap. 180 of the Laws of Saint Vincent and the Grenadines, in that paternity of the said Elisha Sampson has been admitted by him and/or established during his lifetime.
- [5] The claimant relied on an affidavit sworn to and filed on his behalf, and also affidavits sworn to by his cousin Thomas Sampson, a cousin of the deceased, Lester Richards a retired Superintendent of Police and Charles James – all of whom were well-acquainted with the deceased.
- [6] The defendant also filed an affidavit in opposition sworn to by him, and also affidavits from Titus Prince, Verrol Sampson and Olive Douglas.
- [7] All of these aforementioned deponents availed themselves for cross-examination at the trial, for the claimant and defendant respectively. The defendant of course vehemently opposes this claim and also lays claim to the estate of the deceased.
- [8] From the evidence that emerged at the trial certain factual observations can be gleaned. Elisha Sampson was during his lifetime a man of some considerable wealth relatively speaking. From the evidence he was a farmer, shopkeeper, butcher and owner of various

parcels of lands (agricultural) in the vicinity of Chapmans Village. It also turned out that the deceased had several siblings all of whom predeceased him, except one; many nephews and nieces. It is also evident that some of these relations either worked with the deceased or helped him to perform various chores pertaining to his domestic and business operations at different periods.

[9] The claimant contends that he had a close personal relationship with the deceased and that he spent a great deal of time in the deceased's household and assisted him with his business over the years; that the deceased told one of his nephews and other persons that the claimant was his son and provided for the maintenance and support of the claimant and his sister Lynette when they were young; that he also gave the claimant his first cattle which started him out in life; that in the deceased's last days having attained the age of 86 years, it was the claimant who lived at his house and took care of all his businesses and affairs which had been placed in his hands; that he had also told the claimant that on his death he wished that whatever he had should go to the claimant and his sister Lynette; that it was the claimant, who on the death of the deceased, took care of his funeral arrangements with no other family member showing an interest in the funeral; and that since Elisha Sampson's death the claimant has maintained possession of and control of all the assets in the Estate.

[10] All these facts mentioned above came out in the evidence of witnesses for the claimant under cross-examination.

[11] The defendant on the other hand, as borne out by his evidence from himself and his witnesses is the nephew of the deceased. He lived with the deceased as a youngster for a period of time. In 1961 he migrated to England and remained there permanently apart from occasional visits to St. Vincent. He returned to live in St. Vincent after the death of the deceased. He has since armed himself with a Power of Attorney, which he obtained from the sole surviving brother of the deceased who has lived in Barbados since the 1960's, and by virtue of which he seeks appointment as the administrator of the deceased's estate. He claims that Elisha Sampson told him during his lifetime that he

wished the defendant should have his properties on his death and that as a result; he now considers himself entitled to these and hopes that the Court will find in his favour.

THE LAW:

[12] Section 10 of the Status of Children Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines (the Act) lays down the procedure where a declaration of paternity may be obtained. It states –

- “(1) Any person who –
- (a) being a woman alleges that any named person is the father of her child;
 - (b) alleges that the relationship of father and child exists between himself and any other person; or
 - (c) being a person having a proper interest, wishes to have it determined whether the relationship of father and child exists between two named persons, may apply, in such manner as may be prescribed by the Rules of Court, to the High Court for a declaration of paternity and if it is proved to the satisfaction of the Court that the relationship of paternity whether or not the father or the child or both of them are living or dead;
- (2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the Court may, at the same time or any subsequent time, make a declaration determining for the purposes of Section 7 (1) (b), whether any of the requirements of that paragraph have been satisfied.”

[13] It is my view that Section 10 provides for two distinct types of orders to be made upon the Court being satisfied that the relationship of father and child exists between the claimant and the deceased Elisha Sampson; and these are:

- (a) a declaration that he is the claimant's father and/or
- (b) Elisha Sampson being deceased, a further declaration determining pursuant to S. 7 (1) (b) whether any of the requirements of that paragraph

have been satisfied; and in this instant case whether the claimant is entitled to succeed as a beneficiary in the deceased's intestate estate.

[14] To fully comprehend what has been stated above Section 7 of the Act provides that –

- (1) The relationship shall, for any purpose related to succession of property which devolves after commencement of this Act or to the construction of any will or other testamentary disposition or of any other instrument creating a trust operating after such commencement be recognized only if –
 - (a) the father and the mother of the children were married to each other at the time of its conception or any time subsequent thereto, or
 - (b) the paternity has been admitted by, or established during the life time of the father (whether by one or more types of evidence specified by Section 8 or otherwise). Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity should have been so admitted or established during the lifetime of the child or during the period when the child was conceived.
- (2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child was born, the occurrence of any act, event or conduct which enables that relationship and any other relationship traced in any degree through it to be recognized shall not affect any estate, right or interest in any real or personal property to which any person has become absolutely entitled whether beneficially or otherwise, before the act event or conduct occurred."

[15] For completeness Section 8 of the Act provides the nature of evidence required that would be deemed prima facie proof of paternity, and these are –

- (a) a certified copy of an entry in the register of births under the Births and Deaths Act or in a register kept by a minister of a Christian religion of the father's name,
- (b) any instrument signed by the mother of the child and the man acknowledging paternity, once executed by deed and done in the

presence of a notary public, Commissioner of Oaths, Justice of the Peace, registered medical practitioner, marriage officer, midwife or the head of a public educational establishment.

- (c) an affiliation order made in proceedings between the parties
- (d) an order made outside of Saint Vincent and the Grenadines declaring an individual to be the father or putative father of the child in question."

[16] Again S. 8 (4) of the Act provides that a declaration made under Section 10, subject to Section 7 (1) (b), shall for all purposes be conclusive proof of the matters contained in it.

[17] Flowing from these expositions of the law as spelt out in the Status of Children Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines, there are to my mind three issues for the Court to determine in this instant case, and these are –

- (a) What is the standard of proof required under Section 10 of the Act?
- (b) Whether or not the evidence given in the course of the trial is adequate to satisfy the standard of proving that paternity has been admitted by, or established during, the lifetime of Elisha Sampson deceased;
- (c) Whether there is the type of evidence set out under Section 8 of the Act "or otherwise" entitling the claimant to a declaration pursuant to S. 7 (1) (b).

STANDARD OF PROOF:

[18] In dealing with this head I adopt the reasoning of Mitchell, J in the case of "In Re The Estate of Milton Cato deceased (SVGHC No. 43 of 2000)" which I find to be of persuasive value in determining this head pertaining to this instant matter. In that case Mitchell, J decided that in order to meet the standard of proof for an order pursuant to Section 10 (2) of the Act, the claimant in a disputed case where the father is dead must adduce evidence of the type specified under Section 8 or similar types of evidence, and further, that sworn testimony by the widow of the deceased putative father amounted to such "similar type of

evidence.” There is therefore no absolute rule as to what evidence, if it falls outside the evidence specified in Section 8 that can be permitted to satisfy the Court.

[19] At page 13 of his judgment, Mitchell, J outlined what the Court was supposed to focus on as follows –

“The High Court is not seeking to determine whether or not the mother has proved that the child is the child of the alleged father, it is seeking to determine whether or not it is satisfied on a balance of probabilities that the father either admitted paternity during his lifetime or paternity was established during the lifetime of the father The more evidence of the type prescribed by the legislature there is that supports the allegation of the mother and/or the child of the admission of paternity or the establishment of the paternity, particularly in a disputed case, the better.”

[20] So what is required of the claimant in this case to prove his case for a declaration of paternity under S. 10 (1), is evidence which would amount to “proof to the satisfaction of the Court” that the relationship of father and child exists between the claimant and Elisha Sampson the deceased. The kinds of proof or evidence specified as required in S. 8 of the Act are not necessary in a declaration of paternity simpliciter. These would necessarily apply in relation to a declaration under S. 10 (2) of the Act which provides for a declaration of paternity to be made after the death of the father or of the child for any purpose related to succession of property, interpretation of wills and of instruments of trusts. The standard of proof in respect of S. 10 (1) and S. 10 (2) of the Act are therefore different.

[21] But then in an application pursuant to S. 10 (2), the provisions of section 7 (1) of the Act have the effect of making “evidence specified in Section 8 or otherwise” conclusive proof of paternity for purposes of succession. In other words, evidence other than those specified to be adduced as conclusive proof of paternity is clearly allowed.

[22] The learning in Re R. Milton Cato's Estate indicates that it was an application for a declaration pursuant to Section 10 (2). It also goes further to show that the forms of

evidence mentioned in Section 8 as being prima facie evidence of paternity are not exclusive, and other lesser kinds of evidence will suffice, so that evidence of the mother and child and others as to loving acts of acceptance of paternity by the father during his lifetime will suffice. And in this, Section 7 (1) (b) makes reference to "evidence specified in Section 8 or otherwise."

[23] Adopting again the learning in the Re R. Milton Cato case, "Section 8 of the Act would not have been limited as it was by the legislature to forms of documentary admission by the alleged father and findings by a Court if the applicant need only produce any lesser type of self-serving evidence. In disputed cases, the intention of the legislature appears to have been that only evidence of the type provided by Section 8 or similar types of evidence is to suffice to satisfy the Court that the relationship of father and child was recognized by the alleged father" – *Erusdem Generis* rule.

[24] The Re R. Milton Cato case therefore had the effect of holding that a sworn affidavit by the personal representative of the deceased's alleged father is a form of documentary admission which is admissible under S. 8 (4) as conclusive proof of paternity, for purposes of S. 10 (2) application. But it does not hold that this is the only form of "similar type evidence" and therefore it is still open to the Court to include other types of sworn statements based on the circumstances of the case. I accordingly agree with both Mitchell, J and learned Counsel for the claimant that the standard of proof is the civil standard on a balance of probabilities, and that the type of evidence, which will meet this standard, is for the Court to determine in the circumstances of each particular case within the context of the provisions of the Act.

WHETHER OR NOT THE EVIDENCE GIVEN IN THE TRIAL IS ADEQUATE TO SATISFY THE STANDARD OF PROVING THAT PATERNITY HAS BEEN ADMITTED BY, OR ESTABLISHED DURING THE LIFETIME OF ELISHA SAMPSON (DEC'D)

[25] In the instant case neither documentary evidence as specified under Section 8 of the Act nor medical forensic evidence which would constitute prima facie evidence other than

those mentioned under Section 8 exists in support of the application. But the claimant's supplemental affidavit exhibits two letters written by the defendant to the deceased Elisha Sampson from overseas, prior to the latter's death, in which he requests of the deceased to extend greetings to members of the family including the claimant and his sister Lynette.

[26] But on close examination of the defendant's evidence he deposes that his uncle had never said to him at any time whatsoever that the claimant and Lynette were his children nor had any of them visited his uncle (deceased) to his knowledge at any time. In fact cross-examination of the witnesses has demonstrated clearly that the defendant and his witnesses cannot be believed on almost all these pertinent issues of fact.

[27] Careful examination of the evidence of the defendant and his witness Titus Prince at times showed them reneging on the contents of the affidavits which they swore and filed as their evidence in chief and rather indicated to the Court that what they knew to be the truth was different from the contents of their respective affidavits. The defendant himself testified that he never saw the claimant or Lynette on the deceased's premises on the occasions when he visited St. Vincent. He also stated further that he knew the Claimant as a butcher from whom he bought meat and saw him passing in the road, and that Lynette he met at a prayer meeting. Yet he refers to them in the two letters exhibited, as members of the family to whom greetings should be extended from him through the deceased.

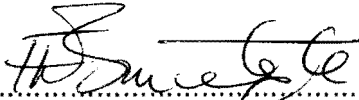
[28] Then there are also the areas of conflict in the evidence of defence witnesses Titus Prince and Olive Douglas. Prince told the Court that the claimant never helped out in the deceased's shop, but Olive testified that the claimant did operate the shop for a considerable period of time during the lifetime of the deceased, especially when he (deceased) was ailing. Why would the deceased entrust the running of his shop to the claimant above all others including the running of his business affairs if he did not consider the claimant a relative of his, as it is not disputed that the defendant, Olive Douglas, and others were all family to the deceased.

- [29] The evidence of the defendant under cross-examination is also pertinent. First he said he was unable to return home to St. Vincent for the deceased's funeral, and one of the reasons advanced for this inability was because he had just taken up a new job. Then at another point in the cross-examination he seemed to be suggesting that this was because he was not informed of the death of the deceased. This to my mind casts the defendant as one groping at shadows hoping to grasp something to support his clearly misconceived bid to control the estate of the deceased. What is even more telling is the fact that having tried to cast the claimant to the Court "as a complete stranger to the family", he does not, after being informed of the claimant's role in the funeral of the deceased, enquire of the claimant as to the expenses incurred in this regard or about any aspect of his uncle's business.
- [30] The Court also got the impression from the defendant that he had no knowledge that the claimant had possession of the properties in the deceased's estate. Yet his sister Olive Douglas testifies that she knew that all of the money and properties were in the charge of the claimant and that she and her brother the defendant had discussed this fact.
- [31] Having analyzed the submissions from Learned Counsel for the defendant, he does not state anything different from the claimants' counsel as regards the statute governing this matter or the principles of law in relation thereto. What he brings into issue are differences in the evidence as adduced by the claimant and his witnesses, as it is not in dispute that the claimant has the onus of proving his case on a balance of probabilities.
- [32] I am afraid however that the differences or discrepancies outlined by learned Counsel for the defendant do not in any way detract from the claimant's case to make me have reservations of any sort, as to the credibility of the claimants' case. I am satisfied that the claimant has proven his case satisfactorily and on a balance of probabilities. The defendant has material discrepancies in his story. I do not believe his story. I am inclined to agree with learned Counsel for the claimant when he asserts in his submissions that what is driving the defendant's opposition to this application for a declaration of paternity is his desire to succeed to all of the deceased's estate for himself, and to that end is attempting to deny his own admission made in the two exhibited letters written years ago

and months apart from one another, before the likelihood of the current dispute over the estate of the deceased featured in his mind.

[33] Having thus said I am satisfied, having considered all the facts of the case, and on a balance of probabilities that the claimant has made out his case for a declaration of paternity and I declare –

that the relationship of father and child exists between the late Elisha Sampson and the claimant David Adolphus McKenzie pursuant to the provisions of Sections 10 (1) (b) and 10 (2) respectively of the Status of Children's Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines, in that paternity of the said Elisha Sampson had been admitted by him and/or established during his lifetime, and that the requirements of Section 7 (1) (b) of the Status of Children's Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines have been satisfied and complied with, and that the claimant's statement of case and affidavits and exhibits in support have met the requirements of Section 8 or otherwise; the defendant's case is hereby dismissed, and the defendant is to pay the claimant's costs in the sum of \$8,000.00.


.....
Frederick V. Bruce-Lyle
High Court Judge