

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. 538 of 1995

Between:

ANTHONY ESTWICK

- Plaintiff/Applicant

v.s.

(1) OLIVE EDWARDS VALMONT
(2) WINSTON FRANCIS CENAC

- Defendants/Respondents

Mr. K. Monplaisir for the Respondents
Anthony Estwick in person

1996: February 28th
November 27th

JUDGMENT

d'Auvergne, J (Chambers)

By summons and supporting Affidavit of Olive Edwards Valmont dated and filed on the 18th day of December 1995 the First named Respondent sought an order in the following terms:

That the Applicant Anthony Estwick be not allowed to make any further applications in this action without the leave of the Court first had and obtained and that, if notice of any such application should be given without such leave, the Respondents should not be required to appear, and that it should be dismissed without being heard as well as for the costs of this application.

The affidavit of Olive Edwards Valmont is hereby reproduced.

AFFIDAVIT

I, **OLIVE EDWARDS VALMONT** of Laborie Street in the City of Castries in the Island of Saint Lucia, make oath and say as follows:

1. The facts deposed to are true and correct and to the best of my knowledge.
2. By a Power of Attorney registered in Vol. 136A No: 139068 I was appointed Attorney of Ephraim Zeno Edwards. A true copy of the said Power of Attorney is now produced and shown to me marked "O.E.V.1".
3. Thereafter on the 2nd May, 1984 in LA 44/84 I petitioned on his behalf and it was ordered by the High Court of Saint Lucia that Mr. Edwards be granted Letters of Administration of the Succession of the late Lydia Beryl Edwards. A true copy of the Order is now produced and shown to me marked "O.E.V.2."
4. In Suit No. 212 of 1992 Anthony Estwick, the Plaintiff herein commenced an action against me and Winston Francis Cenac claiming *inter alia* a declaration that "the Property" being the properties belonging to the Estate of Lydia Beryl Edwards be held by me on trust for sale and to hold the net proceeds of sale, for the Plaintiff. A true copy of the originating Summons is now produced and shown to me marked "O.E.V.3."
5. On 17th June, 1992 the Court agreed that the Plaintiff had no locus standi, and it was ordered by Mr. Justice Albert Matthew that the Originating Summons be struck off with costs to the Defendants in the sum of \$500 each. A true copy of the Judgment is now produced and shown to me

marked "O.E.V.4."

6. The Plaintiff then filed a Notice of Motion for Speccial Leave to Appeal the decision of Mr. Justice Matthew which application was dismissed for want of Prosecution. A true copy of the Certificate of the Order of the Court is now produced and shown to me marked "O.E.V.5."
7. Again, on 18th February, 1994 the Plaintiff filed another Originating Summons in Suit No. 107/94 against Clarence Rambally and Winston Francis Cenac and me seeking discovery of the documents pertaining to the Estate of Lydia Edwards which was dismissed with costs to the Defendants in the sum of \$500 each. A true copy of the said Order of the Court is now produced and shown to me marked "O.E.V.6."
8. By Appeal No. 1 of 1994 the Plaintiff filed a Notice of Motion of Appeal against the decision referred to in paragraph 7 herein.
9. Thereafter , the Plaintiff commenced this Suit seeking to set aside the Order given in L.A. No. 44 of 1984 exhibited herein as "O.E.V.2."
10. I verily believe that each action commenced by the Plaintiff in respect of the Order made in the Estate of Lydia Edwards is an attempt to frustrate and circumvent the various Orders of the Court being an abuse of the process of the Court as well as being scandalous, frivolous and vexatious.
11. I also verily believe that, if not restrained or stopped, the Plaintiff will avail himself of every means to continue to come before this or any Court in Saint Lucia

in respect of the same substantial matter pertaining to the Estate of the late Lydia Beryl Edwards.

12. In these premises I humbly ask this Honourable Court to grant an Order in terms of the Summons herein.

The application and affidavit referred to by Counsel for the First named Respondent are also reproduced.

Take Notice, that this application will be heard by a Judge in Chambers at the High Court of Justice, Peynier Street, Castries, Saint Lucia, on the 18th day of October, 1995 at 9 o'clock, in the forenoon, or soon thereafter as Council can be heard by counsel on the behalf of the Applicant Anthony Estwick, for an order to set aside the order given on the 16th day of May 1984, granting Letters of Administration for the succession of the late Lydia Beryl Edwards to the No. 1 Respondent by reason of Petition L.A. No. 44 of 1984 for irregularity or fraud.

And that the costs occasioned by this Applicant be costs in the cause.

And further take notice that the grounds of this Application are:

- (1) That fraud or artifice has been made use of by the No. 1 Respondent to obtain Letters of Administration for the succession of the late Lydia Beryl Edwards.

AFFIDAVIT IN SUPPORT OF APPLICATION

I, **Anthony Estwick** of Marc, in the quarter of Castries, Producer of Local Souvenirs and gift items, makes an oath and say as follows:

1. I am the Applicant in the above named cause or matter.
2. That by reason of the documents marked as exhibits "A"

relating to certain transactions that were made between the Applicant and the land Lydia Beryl Edwards Barrister At Law, (hereinafter referred to as the Deceased).

3. And by reason of the sum of \$16,044.50 shown under paragraph (b) of the Affidavit of assets and liabilities, in support of Petition L.A. No. 44 of 1984 shown among the bundle of documents marked as exhibits "B".
4. That the Applicant has a legal right or interest in the estate, and in the minutes or records of the Deceased and in certain documents relating to transactions that were made between the Applicant and the Deceased pertaining to the estate of the Deceased.
5. That the statements made in the Affidavit of Support of Petition L.A. No. 44 of 1984, by the No. 1 Respondent, are a fabrication of false evidence with the intent to defraud or deprive the Applicant of his lawful rights or interest in the estate of the Deceased on the grounds that:
 - (1) The No. 1 Respondent Olive Edwards Valmont, and Ephraim Zeno Edwards, are the lawful brother and sister of the Deceased Lydia Beryl Edwards, as is evidence by the last will and testament of the late Mary De Barnard, also called Leonard De Barnard, which shows that the said Mary De Barnard was the Mother of the Deceased Lydia Beryl Edwards.
 - (2) And that the said Mary De Barnard was also the Mother of:
 - (1) Ephraim Zeno Edwards, (2) Clifford Anthony Edwards
 - (3) Olive Edwards Valmont, the No. 1 Respondent herein
 - (4) Ruth Hilda Edwards and (5) Mathilda Vitalis
 - (3) And that the said Mary De Barnard was also the Grand Mother of the children of the said Olive Edwards Valmont

and Arhot Valmont. All of whom were the lawful heirs of the Deceased within the heritable degree. A copy of the last will and testament of the said Mary De Barnard is shown herewith and marked as exhibit "C".

- (4) That the No. 2 Respondent is the Solicitor and legal representative of the Deceased, and Senior partner in the law firm formerly known as Cenac and Edwards.
 - (5) That the signature that is on the promissory note dated the 30th July 1983 for the sum of US\$120,000.00 shown among the bundle of documents marked as exhibits "B" is not the true signature of the Deceased as is evidenced by the signatures of the Deceased shown on the documents marked as exhibit "D" "E" and "F".
 - (6) That to the best of my knowledge information and belief that the Deceased did leave a valid will among her records, and I further state that the minutes or records of the Deceased which has the evidence to prove that the Deceased did not die intestate are been withheld or concealed by the No. 1 and the No. 2 Respondents.
6. That the original Deeds or minutes of the Deceased and the documents relating to the transactions that were made between the Applicant and the deceased, pertaining to the estate of the Deceased are in the custody of possession of the No. 1 and the No. 2 Respondent.
 7. That to the best of my knowledge information and belief that the Deceased in her life time did not transfer or transmit her original Deeds to the No. 2 Respondent as provided under Section 9 Chapter 116 of the Legal Practitioner Ordinance.
 8. And therefore, the original Deeds of the Deceased should have

been or ought to have been deposited in the office of the Registrar as required under Section 10 (1) (3) Chapter 116 of the Legal Practitioners Ordinance.

9. That the No. 1 or the No. 2 Respondents has failed to deposit the original Deeds of the Deceased in the office of the Registrar as required under the provisions of the said Ordinance.
10. And under the provisions of Section 10 (1) (4) Chapter 116 of the Legal Practitioners Ordinance that the No. 1 or the No. 2 Respondents are guilty of an offence against the said Ordinance.
11. And states that all the necessary inquiries required by the law for the prevention of error or fraud was not instituted by the Registrar of the High Court before Letters of Administration for the succession of the Deceased was granted to the No. 1 Respondent by reason of the Petition L.A. No. 44 of 1984. This action is prescribed under article 1014 Chapter 243 of the Saint Lucia Code of Civil Procedure.
12. And further states that a notice of the Appointment of the No. 1 Respondent as the curator to the succession of the Deceased was never advertised in the Saint Lucia Gazette, as required under article 1066 Chapter 243 of the Saint Lucia Code of Civil Procedure.
13. The Applicant states that the No. 2 Respondent has neglected or has refused to continue to perform the duties of the office of the Deceased regarding a Hypothecary Obligation executed before the Deceased on the 30th day of November 1978 at the office of the said law firm formerly known as Cenac and Edwards, by which the Applicants parcel or lot of land registered in Vol, 118 No. 121990 was mortgaged with the Saint

Lucia Co-operative Bank Limited, to secure debts and liabilities up to a limit of \$3,500.00 with interest and costs and registered on the same day in Vol. 131a No. 122365 as the first registered claim against the said parcel or lot of land registered in Vol. 118 No. 121990 in favour of the Saint Lucia Co-operative Bank Limited.

14. And by a Deed of Radiation executed before the Deceased at the office of the said Law firm of Cenac and Edwards on the 7th day of August 1979 in favour of the Applicant and registered on the 9th day of August 1979 in Vol. 132a No. 124979 that the said Hypothecary Obligation registered in Vol. 131a No. 122365 against the said parcel or lot of land registered in Vol. 118 No. 121990 was discharged.
15. And by reason of the neglect or failure of the No. 2 Respondent to continue to perform the duties of the office of the Deceased regarding the said Hypothecary Obligation registered in Vol. 131a No. 122365 against the parcel or lot of land registered in Vol. 118 No. 121990 and released by Deed or Radiation registered in Vol. 132a No. 124979.
16. That on the 22nd day of July 1991 that he the Applicant was arrested by the Sheriff of the High Court of Justice, and was committed to prison for a term of six weeks for failure to vacate his parcel or lot of land registered in Vol. 118 No. 121990 by reason of the said Hypothecary Obligation registered in Vol. 131a No. 122365 and released by Deed of Radiation registered in Vol. 132a No. 124979 by the Deceased.
17. And as a result of the matters referred to above that the Applicant has suffered, and continues to suffer injuries, losses and damages.
18. And that the No. 1 and the No. 2 Respondents are liable to

damages.

19. The Applicant repeats paragraphs 2, to 14 and states as follows:

- (a) That the original Deeds or minutes of the Deceased, and the documents relating to the transactions that were made between the Applicant, and the Deceased relating to the estate of the Deceased are being withheld or concealed by the No. 1 and No. 2 Respondents.
- (b) That the statements made by the No. 1 Respondent in the Affidavit of Support of Petition L.A. No. 44 of 1984 are a fabrication of false evidence with the intent to defraud or deprive the Applicant of his lawful rights or interests in the estate of the Deceased and to cause injuries, losses and damages, to the Applicant.
- (c) And that he the Applicant has suffered and continues to suffer injuries, losses and damages by reason of the matters referred to above.
- (d) That the order given on the 16th day of May 1984 by the Registrar of the High Court of Justice granting Letters of Administration for this succession of the late Lydia Beryl Edwards, to the No. 1 Respondent by reason of Petition L.A. No. 44 of 1984 is irregular and or was fraudulently obtained.

20. And therefore the Applicant is hereby applying to the Honourable Court for an order:

- (1) That the order given on the 16th day of May 1984 by the Registrar of the High Court of Justice granting Letters of Administration for the succession of the late Lydia Beryl Edwrds to the No. 1 Respondent by reason of

Petition L.A. No. 44 of 1984 be set aside and or be declared null, void and of none effect.

- (2) That the Court of Judge makes an order regarding the disposal of the original Deeds or minutes of the Deceased.
- (3) That all the documents relating to the transaction that were made between the Applicant and the Deceased relating to the Estate of the Deceased be delivered forthwith to the Applicant.
- (4) That the No. 1 Respondent grant permission to the Applicant to inspect the premises of the Deceased at Jeremie Street in Castries to inspect and to take copies or extracts of any Deeds or minutes and any other documents forming part of the official and unofficial records of the Deceased.
- (5) And that the No. 2 Respondent grant permission to the Applicant to inspect the Minutes of the partnership and/or to give to the Applicant copies or extracts of any Deeds or any other documents forming part of the official and unofficial records thereof.
- (6) An order that the Applicant be at liberty to conduct all necessary and consequential accounts, directions and inquiries relating to his rights or interest in the estate of the Deceased.
- (7) An order that the Application be awarded his costs occasion by this Applicant including the costs of service of this Application on the No. 1 and on the No. 2 Respondents to be taxed.

- (8) Damages for injuries, losses, inconvenience, embarrassments, humiliation, mental pains and suffering suffered by the Applicant to be assessed and costs to be taxed.

A further affidavit dated and filed on the 24th November, 1995 is also reproduced.

AFFIDAVIT

I, **Anthony Estwick** of Marc, in the quarter of Castries producer of Local Souvenirs and gift items, makes an oath and say as follows:

1. I am the applicant in the above cause or matter.
2. That the applicant has a right of action by reason of the matters disclosed in Affidavit of support of application to set aside for irregularity and or fraud and upon the documentary evidence submitted and to the court in the above cause or matter.
3. That the No. 2 Respondent the senior partner in the law firm formally known as Cenac and Edwards, has refused and continue to refuse to perform the duties of the office of the late Lydia Beryl Edwards Attorney at Law and junior partner in the law firm of Cenac and Edwards who died on the 7th day of December 1980 at Jeremie Street in the City of Castries.
4. That the original deeds or minutes of the late Lydia Beryl Edwards are known to be in the custody or possession of the No. 2 Respondent and that the original deeds of the deceased has not been disposed of as required under section 10, Chapter 116 of the Legal Practitioners Ordinance.
5. That no other notary has been appointed to continue to perform the duties of the office of the late Lydia Beryl Edwards.

6. That no notice of the appointment of the No. 1 Respondent as the curator for the succession of the late Lydia Beryl Edwards, were ever advertised in the Saint Lucia Gazette as required under article 1066 Chapter 243 of the Saint Lucia Code of Civil Procedure.
7. That documents of agreement that were made between the applicant and the deceased Lydia Beryl Edwards, to sell certain portion of her estate to the applicant for valuable consideration has been withheld or has been fraudulently concealed by the No. 1 and the No. 2 Respondents.
8. That the said documents of agreement was in the custody of possession of deceased at the time of her death without copies of the said documents been delivered to the applicant before the death of the deceased.
9. That the No. 1 and the No. 2 Respondents who have the custody of the possession of the said documents of the agreement and the official records of the deceased has refuse and continue to refuse to deliver up the said documents to the applicant unless ordered by the court or the judge so to do.
10. That the order given on the 16th day of May 1984, by the Registrar of the High Court of Justice granting Letters of Administration for the succession of the deceased Lydia Beryl Edwards to the No. 1 Respondent by reason of petition L.A. No. 44 of 84, is irregular and/or was fraudulently obtained.
11. The applicant verily believe that the deceased Lydia Beryl Edwards did deposit copies of the said documents of agreement and other documents in her safety deposit box in the St. Lucia Co-operative Bank Ltd for safe keeping and that he the applicant would require an order from the court or judge in order that the said box be opened.

12. The applicant does not have the means to make the necessary disbursements and by reason of the matters referred to in paragraph 2,3,4,5,6 and 8 above that the applicant is asking the Honourable Court or Judge for:-

- (1) Leave to proceed in forma pauperis and/or that the order given on the 16th day of May 1984, by the registrar of the High Court of Justice granting Letters of Administration for the succession of the late Lydia Beryl Edwards to the No. 1 Respondent by reason of petition L.A. No. 44 of 84 be set aside and/or be declared null, void and of non effect upon the fact stated in affidavit of support of application to set aside for regularity or fraud, and upon the evidence contained in the document submitted to the Court in the above cause or matter.
- (2) An order that the safety deposit box of the deceased believe to be in the St. Lucia Co-operative Bank Ltd be opened to the applicant and that the applicant be permitted to inspect the said box and to take copies or extracts of any documents related to his rights or to interest in the estate of the late Lydia Beryl Edwards.
- (3) That the applicant be permitted to inspect his mortgage record in the St. Lucia Co-operative Bank Ltd. file ML2 No. 51831 of the 30-11-78 believe to contain information relative to the transactions that were made between the application and the deceased.
- (4) The order was asked for in the Affidavit of support of application to set aside for irregularity and/or fraud in the above cause or matter.

At the hearing Learned Senior Counsel informed the Court that the Summons was an unusual one and it was brought under order 18 rule

vociferously argued that the applicant is a
ing the Court's time with his various applications
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entire affidavit of Olive Edwards Valmont and the

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The exhibit represents a registration under a Business Names Ordinance No. 20 of 1980 dated 29th day of April 1981 called "Savitar Enterprising."

Learned Counsel argued that each action commenced by the Plaintiff Estwick in respect of the order made in the estate of Lydia Edwards was an attempt to frustrate and circumvent the various orders of the Court and was therefore an abuse of the process of the Court as well as being scandalous and vexatious.

He said that it should be noted that Estwick had not paid any of the costs granted by the Court in the various applications.

He urged the Court to grant the order as set out in the application of the 18th December, 1995 and quoted the case of **Lord Kinnaird v Field 1905 to Chan. 306.**

Mr. Estwick in reply to the application told the Court "I have a right of action under Business Company known as Savitar Enterprising formed between Beryl Edwards and myself. When the latter died (he means former) the documents were in her custody Legal Practitioner Ordinance."

CONCLUSION

After careful analysis of the nature and object of this present application and considering all the facts of the entire case I find that the present case is on all ~~points~~^{from} with **Lord Kinnaird v Field 1905 Chan. Division Page 306** and I adopt the order that was made by **Warrington J** after distinguishing the cases of **Grepe v Loan 37 Chan. Division 1618** and **Suir v Newton (1886) 17 Chan. Division 169** and my order is therefore as follows:

That the Applicant Anthony Estwick be not allowed to make any further applications in this action without the leave of the Court first had and obtained, and that, if notice of any such application

should be given without such leave, the Respondents should not be required to appear, unless the judge on the return thereof shall so direct, the application shall be dismissed without being heard.

The application is dismissed

That the applicant Anthony Estwick do pay Costs in the sum of \$500 to the First named Respondent.

Suzie d'Auvergne

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SUZIE d'AUVERGNE
PUISNE JUDGE