

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCVAP2024/0002

BETWEEN:

**[1] ELVIN HODGE
[2] ETHELYNE HODGE**

Appellants

and

THE REGISTRAR OF THE HIGH COURT

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mde. P. Nicola Byer
The Hon. Mr. V. Dexter Theodore

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Ms. Marie-Lou Creque with Ms. Nia Belgrave for the Appellants
Ms. Shonice Warner of the Attorney General's Chambers for the Respondent

2025: March 25;
September 18.

Civil appeal – jurisdiction to hear appeals against a Registrar's decision - Probate Rules - Interpretation of certain provisions of the Eastern Caribbean Supreme Court Non Contentious Probate Rules – Advertisement requirement for second/subsequent grants – Approach to be adopted in the event of a caveat but no further steps taken

This appeal, filed on 30th January 2024, sought to challenge the respondent's decisions contained in three correspondences regarding her interpretation of certain provisions of the Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017 ("Probate Rules"). The first notice of appeal came up for hearing before the Full Court on 1st November 2024 and the appellants were given leave to file an amended notice of appeal removing the application for a case to be stated and instead couching the appeal as an appeal of the respondent's decision.

The appellants filed a re-amended notice of appeal on 12th November 2024 based upon a correspondence issued by the respondent in which she made certain administrative decisions in a probate application. The notice of appeal stated that the respondent made an erroneous decision on a point of law in her application of rules 62 and 63 of the Probate Rules to their application for a grant of letters of administration *de bonis non* in the estate of James Archibald Hodge, deceased (the deceased).

In that re-amended notice of appeal, the appellants listed ten discrete issues with the respondent's decision regarding a caveat filed and whether advertisement was required for second or subsequent grants. This Court distilled the following issues for determination on appeal: (i) whether there is a requirement for advertisements to be placed in a newspaper prior to the issuance of *grant de bonis non administratus* and (ii) whether an application is required to strike out the acknowledgment of service in response to a warning to a caveator when nothing further was done by the caveator, in order for the probate application to continue. A third issue arose on appeal of whether this Court was the correct forum to hear and consider the appeal as it was from the respondent or particularly whether the High Court should have been the court of first complaint.

At the first hearing before the Full Court, the appellants indicated that the decision to appeal was made when the High Court refused to accept jurisdiction to hear the appellants' complaint against the respondent's decision. Although the said High Court decision was not presented to the Full Court, the appellants informed the panel that the learned judge determined that she could not hear the matter as the respondent, at the time of making the determinations in issue, was acting as a sister judicial officer and as such the learned judge could not be called upon to make a determination in those circumstances. This indication as to what transpired before the learned judge was not disputed by the respondent during the appeal hearing and therefore accepted as the factual matrix on appeal.

On 14th February 2023 the appellants filed an application for a *grant de bonis non administrates* ("subsequent grant") concerning the estate of the deceased on the basis that their sister, Evelyn A. Hodge, who had obtained a grant of the deceased's estate in 2012 (that grant itself being a second grant), died in 2022 without completing the administration of the said estate. Thus, by the time the application was made to the respondent in 2023, it was in fact the third time that the deceased's estate was to be administered.

Another sibling of the appellants lodged a caveat (the "caveator") against any dealings with the estate on 16th May 2022 and it was thereafter renewed on 15th November 2022. Following this, the appellants issued a warning dated 15th February 2023 to which the caveator submitted an acknowledgement of service on 28th February 2023 within the stipulated period. The caveator thereafter took no further action and the appellants sought the respondent's intervention to have the caveat removed, based on the caveator not having taken any action to advance his objection as provided under the Probate Rules.

Thereafter a series of correspondences flowed between the appellants and the respondent seeking to have two matters regarding the deceased's estate resolved. These were whether there was indeed a requirement to advertise a second or subsequent grant, and whether the acknowledgment of service filed by the caveator could remain in force preventing the

issuance of the grant where the caveator had taken no additional steps, and that the contents of the acknowledgement of service did not raise any contrary interest to the person who has filed a warning to the caveat.

The respondent's final determination however was that advertising is required for second and subsequent grants on the basis of rule 15 of the Probate Rules and that an acknowledgment of service having been filed by the caveator, the onus was on the appellants to make an application to strike out the acknowledgement of service or seek directions of the Court that the caveat is no longer in force or for both, even where there was an absence of an application for directions pursuant to Form P2 of the Probate Rules or the filing of a probate action by the caveator.

Held: dismissing the appeal and awarding costs to the respondent to be assessed before a judge of the high court if not agreed within 21 days of today's date, that:

1. There being no provision in the Probate Rules as to the procedure for the appeal process from the decision of the respondent, the Territory of the Virgin Islands would receive the procedure as it applies in the United Kingdom as of today's date. In real terms, that therefore means that rule 65 of the Non Contentious Probate Rules UK (NCPR UK) (1987 and continued in 2024) is applicable and appeals from the decision of the respondent would be made to the judge on summons. That being the case, the appellants being aggrieved by the determination of the respondent in matters relating to probate may rely on and invoke the provisions of rule 65 of the NCPR UK and file a claim pursuant to part 60 of the Civil Procedure Rules. It was therefore open to the appellant, upon receipt of the learned judge's decision declining jurisdiction (for reasons not before this Court), to have properly lodged an appeal against that refusal itself to this Court under section 30(1)(b) of the Eastern Caribbean Supreme Court (Territory of the Virgin Islands) Act ("the Act"). Had they done so, the jurisdictional issue could have been conclusively resolved. Instead, by appealing directly against the registrar's decision, the appellants invoked a jurisdiction this Court does not possess or can call onto itself.

Rule 65 of the Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017 applied; section 30(1)(b) of the Eastern Caribbean Supreme Court (Virgin Islands) Act Cap 80 of the Revised Laws of the Virgin Islands applied; Part 60 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 applied.

2. Decisions of the registrar, even when exercising delegated judicial functions under rule 7(2) of the Probate Rules do not and cannot constitute orders of the high court for the purpose of section 30(1)(b) of the Act. They are subject to primary appeal to the high court itself. To hold otherwise would distort the intent of section 30(1)(b) of the Act which requires a high court judgment as a precondition for appellate jurisdiction and thereby inviting direct recourse to this Court against non-appealable decisions. Consequently, all appeals against the

registrar's decisions made pursuant to the Probate Rules must be initiated in the High Court under part 60 of the Civil Procedure Rules. To satisfy rule 60.2(3)(b), the enactment enabling the appeal is section 11 of the Act which incorporates rule 65 of the NCPR UK. Where a high court judge improperly declines to hear a part 60 appeal (for example on jurisdictional grounds), that refusal is itself an appealable "order" under section 30(1)(b). This ensures access to redress while preserving hierarchy. Therefore, this Court has no jurisdiction to undertake a direct review of the respondent's decision.

Rule 7(2) of the **Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017** applied; section 30(1)(b) of the **Eastern Caribbean Supreme Court (Virgin Islands) Act Cap 80 of the Revised Laws of the Virgin Islands** applied; section 11 of the **Eastern Caribbean Supreme Court (Virgin Islands) Act Cap 80 of the Revised Laws of the Virgin Islands** applied; Rule 60.2(3)(b) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** applied; **King v King** [2023] EWHC 2922 (Fam) applied.

3. In relation to the advertisement requirement for second and subsequent grants, rule 56 of the Probate Rules requires that an application for a subsequent grant must have the usual papers whether such an application is under an intestacy or under a will (subsection 2) and there are two clearly identified requirements which are not needed for those subsequent grants, an affidavit of due execution where there is a will and death certificate of the deceased (subsection 4). There are no other exceptions and as such it must be pellucid that as illogical as it may appear, it was not open to the respondent to disregard rule 15 of the Probate Rules which makes the specific provision for the advertisement of a grant of probate or a grant of letters of administration, and rule 59 which states in mandatory terms that a grant shall not be issued unless advertised. There having been no exception for the advertisement of the subsequent grant in the manner of the other exceptions, there can be no other interpretation than the clear finding that the requirement for the advertisement remains for second or subsequent grants. While this may appear duplicative where an estate was properly advertised during initial probate, any modification must come through legislative amendment rather than judicial discretion. The respondent properly applied the rules as written, though this outcome highlights a potential area for procedural reform.

Rules 15, 56 and 59 of the **Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017** applied.

4. When considering the wording of Form P22 and how the same was completed, all that is in fact required of the person acknowledging the warning to caveat is that they are to "set out the interest of the caveator". This instruction is clearly distinct from the wording contained in rule 62 of the Probate Rules which sets out what the person issuing a warning to a caveat must do. What is also clear from reading this rule is that any acknowledgment to the warning must be in the

form as provided in the Probate Rules and once that acknowledgment is filed and served that provides the evidence without the need for more, that the caveator has a contrary interest. At that juncture the caveat then becomes permanent and cannot be withdrawn by the caveator without an order and remains in place until some positive action is taken by the caveator or the applicant for the grant.

Rule 62 of the **Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017** applied; **Kerry v Kerry** (1961) 4 WIR 70 applied.

5. There is no ambiguity in rule 63(4) of the Probate Rules which states that unless the court otherwise directs, a caveat in respect of which an acknowledgement of service has been filed, shall remain in force until the commencement of a probate action. Once properly acknowledged, a caveat persists until either the caveator initiates probate proceedings (and the matter becomes a probate action outside of the remit of the registrar) or the court orders its removal on application. Thus, the acknowledgment of service cements the caveat in place. If the caveator fails to act, then the court can be asked to intervene and make an order regarding the continued validity of the caveat. It cannot be open to the respondent on her own initiative to make that determination. It was therefore well within the respondent's rights to take the position that the appellants, who wished to have the caveat removed, should take the step to commence the necessary proceedings to have the same removed, upon notice to the caveator.

Rule 63(4) of the **Eastern Caribbean Supreme Court Non Contentious Probate and Administration of Estates Rules 2017** applied.

6. The structure created by the Probate Rules serves three important policy objectives: (1) it prevents unilateral nullification of caveats, (2) it maintains the integrity of the warning system, and (3) ensures that disputes are properly adjudicated. While this interpretation may appear rigid, it reflects the careful balance struck by the rules between (1) efficient estate administration, (2) the protection of legitimate interests and (3) due process requirements. Where the system creates practical difficulties the solution lies in legislative amendments, clear practice directions for handling prolonged caveats or time limits for caveators to commence proceedings. Absent such modifications the Court must apply the rules as written.

JUDGMENT

- [1] **BYER JA [AG.]**: By Notice of Appeal filed on 30th January 2024 (the 1st Notice), the appellants sought to appeal the decisions of the respondent contained in

correspondences dated 5th June 2023, 13th November 2023, and 15th January 2024. By this 1st Notice, the appellants urged this Court to direct the respondent to issue a case stated to the Court on the interpretation of certain provisions of the Eastern Caribbean Supreme Court (Non Contentious Probate and Administration of Estates) Rules 2017 (“the Probate Rules”), or in the alternative to set aside the decisions made by the respondent on the interpretation of those provisions which shall be discussed in more detail in this decision.

- [2] The 1st Notice came up for hearing before the Full Court on 1st November 2024 before the panel comprising of Price Findlay JA (as she then was), Farara JA (Ag) and Thom JA (Ag). At that hearing, the appellants were given leave to file an amended notice of appeal removing the application for a case to be stated and instead couching the appeal as an appeal to this Court from the decision of the respondent.
- [3] On 12th November 2024 the appellants therefore filed their re-amended notice of appeal (“2nd Notice”) and therein added the correspondence of 6th June 2023 as also containing the respondent’s decision and relied on one substantive ground of appeal. That ground was that the respondent had made an erroneous decision on a point of law in her application of rules 62 and 63 of the Probate Rules to the application of the appellants for a grant of Letters of Administration *de bonis non* in the estate of James Archibald Hodge, deceased (the Deceased). In relation to their complaint, they listed ten discrete issues with the said decision regarding a caveat that had been filed (sub-grounds a to g) and whether advertisement was required for second or subsequent grants (sub-grounds i to l) which will be set out below.
- [4] At the hearing before this presently constituted panel, the appellant informed the Court that the decision to appeal directly to this Court was made when the High Court refused to accept jurisdiction to hear the appellant on their complaint against the decisions of the respondent. Although the said decision or order of the learned judge was not placed before this Court, the appellant informed the Court that the

learned judge determined that she could not hear the matter as the respondent, at the time of making the determinations which they have issue with, was acting as a sister judicial officer and as such the learned judge could not be called upon to make a determination in those circumstances.

[5] This indication as to what transpired before the learned judge was not disputed by the respondent during the hearing of the matter before this Court and it must therefore accept the factual matrix as provided.

[6] In order, however, to appreciate the arguments that were raised before the full Court, a brief background is needed of the matter.

Background

[7] On 14th February 2023 the appellants filed an application for a *grant de bonis non administratus* (“subsequent grant”) concerning the estate of the deceased, the father of the appellants. The application was made on the basis that the sister of the appellants, one Evelyn A. Hodge, who had obtained a grant of the estate of the deceased in 2012, (that grant itself being a second grant) died in 2022 without completing the administration of his estate. Thus, by the time the application was made to the respondent in 2023, it was in fact the third time that the Deceased’s estate was to be administered.

[8] A caveat against any dealings with the estate was lodged by a sibling of the appellants (the “caveator”) on 16th May 2022 and thereafter renewed on 15th November 2022. Following this, the appellants issued a warning dated 15th February 2023. The caveator submitted an acknowledgment of service on 28th February 2023, within the stipulated period. The caveator thereafter took no action, and the appellants sought the intervention of the respondent to have the caveat removed, the caveator not having taken any action to advance his objection as was provided under the Probate Rules.

- [9] Thereafter a series of correspondences flowed between the appellants and the respondent seeking to have two matters resolved as it related to the estate of the deceased. One was whether there was indeed a requirement to advertise a second or subsequent grant and the other was whether the acknowledgment of service filed by the caveator could remain in force preventing the issuance of the grant, where the caveator had taken no additional steps and that the contents of the acknowledgement of service did not raise any contrary interest to the person who has filed a warning to the caveat.
- [10] The respondent's final determination however was that (a) advertising is required for second and subsequent grants on the basis of rule 15 of the Probate Rules and (b) the acknowledgment of service having been filed by the caveator, the onus was on the appellants to make an application to strike out the acknowledgment of service, or seek directions of the Court that the caveat is no longer in force, or for both, even where there was an absence of an application for directions pursuant to Form P2 of the Probate Rules or the filing of a probate action by the caveator.
- [11] It is from these decisions that the appellant therefore seeks to appeal to this Court.
- [12] The gravamen of the grounds of appeal as was noted earlier is centered around the complaint that the respondent erred in her application of rules 62 and 63 of the Probate Rules to the appellants application for a *de bonis non* grant for the following reasons:
- (i) The caveat was no longer in force after its 6 month expiration date as the caveators response to the Warning to Caveator or the Acknowledgement of Service did not meet the threshold required by Rule 62(2) and Rule 62(3) as it failed to show cause against the sealing of a grant and which Warning to the Caveator was duly issued in Form P21 to the Caveator pursuant to Rule 62(1).

- (ii) Rule 63(3) is applicable to the Caveat such that the Caveat ceased to have effect given that there was no pending application for directions pursuant to Form P2 made by the Caveator under Rule 62(3) and as stated in the Warning to the Caveator.
- (iii) The Warning to the Caveator having been issued by the respondent permitted the respondent to 'issue a grant of *de bonis non administrates* in the estate notwithstanding your caveat.'
- (iv) Having regard to the purpose of a Caveat, the Caveator having filed an Acknowledgment of service but failing to show cause against the sealing of a grant and taking no further steps to advance his position, it would render an absurd result for the person warning the Caveator being mandated to take proactive steps such as a strike out application in order to advance the issue of a grant.
- (v) Having regard to the purpose of a caveat, the Caveator having filed an Acknowledgment of service but failing to show cause against the sealing of a grant and taking no further steps to advance his position, it would be unjust to permit the Caveator to take no further steps and leave a caveat running *ad infinitum* thus impeding the issuance of a grant.
- (vi) The probate action contemplated as directed by Rule 64(1)(a)(i) implies that the claim must be filed by the Caveator and no such claim having been filed by the Caveator it cannot be commenced by the person Warning the Caveator.
- (vii) Given the conjunctive wording of Rule 64(1)(c) and given that the application currently before the respondent was made by the appellant it would be nonsensical for the appellant to commence a probate action and still be required to make an application for the issue of a grant themselves.

- (viii) Advertising was not required by the Probate Rules in cases of second or subsequent grants and as the previous grant in the instant case was issued some ten years prior, and thus in practical terms any creditors or any other party in hierarchy to the appellants, would have been dealt with in the first grant.
- (ix) Form P7 of the Probate Rules makes no reference to advertisements for second grants of any nature whatsoever.
- (x) Rule 15 of the Probate Rules requiring advertisement speaks to grants of Letters of administration and does not apply to second or subsequent grants.

[13] At the hearing of the appeal, however, before the issues identified on the grounds of appeal could be considered, the respondent questioned whether this Court was the correct forum to hear and consider the appeal as it was from the respondent directly, or whether the High Court should have been the court of first complaint.

Preliminary Issue – Jurisdiction of the Court Respondent’s Submissions

[14] The crux of the respondent’s submission on this issue was that the appellants initially pursued the appeal under Part 61¹ of Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (the “CPR”) but have now sought to shift the proceedings to an appeal under Part 62². The respondent suggested that the Court of Appeal lacks original jurisdiction to entertain the relief sought and the procedural change may have been improper.

[15] The respondent submitted that the court’s jurisdiction to grant a declaration is both original and supervisory. Section 11 of the **Eastern Caribbean Supreme Court (Virgin Islands) Act**³ (“the Act”) establishes that the High Court has original

¹ Appeals to the Court by way of Case Stated.

² Appeals to the Court of Appeal.

³ Cap 80 of the Revised Laws of the Virgin Islands applied.

jurisdiction in civil, probate, divorce and matrimonial matters. It decides cases at first instance and has limited appellate jurisdiction over lower court and tribunal decisions. Under section 30 of the Act, the respondent submitted that the Eastern Caribbean Supreme Court of Appeal has appellate jurisdiction, not original jurisdiction. Essentially, the respondent averred that the Court of Appeal has the jurisdiction to review High Court judgments rather than to initiate cases.

[16] The respondent submitted that the Court of Appeal's jurisdiction was primarily appellate; its role was to review lower court decisions for legal or procedural errors rather than to issue original rulings on probate matters. The ECSC Court of Appeal Rules do not provide the original jurisdiction to issue declarations except where necessary on appeal. It is for the High Court, as suggested by the respondent, to determine whether probate rules require advertisement for a second grant via judicial review. Additionally, the respondent submitted that the reliefs sought in the appeal are broad and regulatory and suggests an attempt to establish procedural principles rather than challenge a specific decision. Since the relief sought requires an original interpretation of the probate rules rather than a review of judicial errors, the High Court would be the appropriate forum and not the Court of Appeal.

[17] The respondent contended that since the respondent's decision was procedural and administrative and not a judicial determination, the appropriate relief for the appellant would be judicial review under rule 56.1(1) of the CPR and not an appeal under part 62. It was also the respondent's submission that the conversion of the appeal from a Part 61 appeal, or appeal by way of case stated, to a part 62 appeal was an exceptional procedural step. The CPR does not provide for such a conversion or transformation of an appeal and if the appellants have sought relief under the improper rule, their application should be struck out rather than modified.

[18] Finally, during oral submissions, the respondent was questioned by the Court on the applicability of part 60⁴ of the CPR to the appeal. In response the respondent,

⁴ Appeals to the High Court.

while continuing to submit that the respondent's decision was amenable to judicial review, did acknowledge that the parameters of part 60 may have been applicable but that they had not considered the same and could make no substantive submission on its applicability.

- [19] In any event, the nub of the respondent's argument was that this Court was not the forum whichever approach was invoked and, as such, in the final analysis, the appeal should be dismissed.

Appellants' Submissions

- [20] In reply, the appellants submitted that the case at bar is an appeal from the decision of the respondent that is fraught with both legal and procedural errors. In that vein, the appellant was not seeking to invoke the Court of Appeal's original jurisdiction. Indeed, during oral submissions to the Court on this issue, the appellant informed that the decision to appeal directly to this Court had been made when the High Court refused to accept jurisdiction to hear the appellant on their complaint against the decisions of the respondent. Although the said decision or order of the learned judge was not placed before this Court, the appellant informed the Court that the learned judge determined that she could not hear the matter as the respondent, at the time of making the determinations, was acting as a sister judicial officer and as such the learned judge could not be called upon to make a determination in those circumstances. It must be noted here that the respondent did not issue a demurrer to this factual matrix.

- [21] Thus, the appellants submitted that if the matter was remitted to the High Court under Part 60, the matter would again find its way back to the Court of Appeal on a determination that this Court and not the High Court was the appropriate forum, making the approach of the respondent unavailable in the circumstances.

- [22] The appellants also submitted that in any event the judges of the High Court and the respondent effectively operate in concurrent jurisdictions. Therefore, the

appellants submitted that the matter was properly before the Court of Appeal and that the question of procedural impropriety ought to fall away. Regardless, the appellants submitted, it was open to the Court to further the overriding objective of the CPR to deal with cases justly, expeditiously and to save expense especially since the 2nd Notice was before this Court and the respondent in participating in settling the filing of that 2nd Notice should not now be permitted to raise matters which they had waived in participating in the hearing which ordered the appeal in its present form.

Court's Analysis and Findings

- [23] As I consider these arguments on this preliminary issue, it must be noted categorically, that I do not accept the respondent's contention presented before this Court that they reserved the right to argue this jurisdiction question. Neither do I accept that the respondents waived the right to rely on this issue before this Court.
- [24] Upon a review of the orders that emanated from this Court, although there was no order whose preamble made it clear that the respondent was relying on the issue of jurisdiction as a preliminary point, as early as 30th July 2024, when the 1st Notice was considered by a single judge of the Court,⁵ not only did he order that the appeal should be considered by the Full Court but also that the question of jurisdiction should be considered by the Full Court. In November 2024, when the matter came up in this Court, there was no order made varying the 30th July 2024 order, and certainly the order of 1st November 2024⁶ was only concerned with case management directions for the issuance of the 2nd Notice.
- [25] It is therefore pellucid to me that this Court is properly seized of the issue which it must determine. To do otherwise would give credence to the interesting and entirely alarming proposition as contended by the appellant that if the respondent participated in a case management hearing and did not therein raise the issue of a

⁵ Before Ward JA order of a single judge on 30th July 2024.

⁶ Before Price Findlay JA (as she then was) Farara JA (Ag) and Thom JA (Ag.).

court's jurisdiction, that waiver has taken place and as between parties an agreement can be reached to confer jurisdiction on a court that does not have it in the first place.

- [26] That being said, the starting point must be to consider the statutory creation of the post of registrar of the High Court and a registrar's position within the hierarchical framework of the court system. By section 60(3) of the Act, the office of the registrar of the High Court was firmly settled as having such power and authority and the ability to perform such duties as shall be necessary '*...for the due conduct and discharge of the business of the High Court amid the Court of Appeal as the Chief Justice or other judge authorised by him in that behalf shall direct.*' Subsections 4, 5, and 6 further establish that the Registrar is *ex officio* a Deputy Registrar of the Court of Appeal, the Admiralty Marshall and the Provost Marshall.
- [27] The registrar is also clothed with the ability to exercise the functions of the high court under rule 2.5(1) of the CPR and does so '*in accordance with these Rules and any practice direction made by the Chief Justice.*'
- [28] What is therefore clear to me is that the office of the registrar primarily functions to provide the administrative underpinning necessary for the smooth running of the court but may from time to time, and specifically when provided for by the necessary statutory or procedural framework, the office holder is also permitted to undertake duties which are quasi-judicial in nature. These may include, for example, where they are given the power to deal with applications for letters of administration or probate⁷ or where they are appointed as the taxing officer for the court.⁸
- [29] Historically, within the confines of the probate court, any powers attached to that court had in fact been wielded by a judge in open court; however, with the introduction of the Non Contentious Probate Rules 1954 (1954 Rules) in the United

⁷ Section 5 the Probate Rules.

⁸ Section 62(1) the Act.

Kingdom, the powers exercised by a judge in open court were transferred to the registrar who was empowered to deal with all matters regarding probate, save and except what was referred to as for larger estates.⁹ However as early as these 1954 Rules, appeals from decisions were formulated on a staged basis, as appeals from the district probate registrar were made to the principal registry and appeals from the principal registry were made on a summons to a judge.¹⁰ Subsequent to these 1954 Rules, in 1967 the Non- Contentious Probate (Amendment) Rules removed any financial limitation on the ability of registrars to deal with estates¹¹ and removed the staged approach to appeals as there was one registrar and appeals were made on summons to the judge of the high court¹². By the time the Non-Contentious Probate (Amendment) Rules 1985 came into force, registrars were given the power to deal with subpoenas to bring in testamentary documents, citations and summonses in relation to applications for grants made and grants already issued¹³. Thus, with the advent of the Non-Contentious Probate Rules of 1987 (NCPR UK) all these powers were consolidated therein and these rules and their subsequent amendments¹⁴ up to the advent of the Probate Rules governed probate practice in this sub-region including the Territory of the Virgin Islands by virtue of section 11 of the Act.

[30] Like all of the island states which have adopted the Eastern Caribbean Supreme Court as their court of record, the reliance on section 11 of the Act, allowed for the reception of the law and procedure of the High Court of the United Kingdom *inter alia* in matters of probate where there was no special provision or rule of law contained in the Territory. Section 11, which is well known to all parties' bears restating here in so as far as it is relevant to these proceedings:

“the jurisdiction vested in the High Court in...probate...shall be exercised in accordance with the provisions of this Act and any other law in operation in the Territory and rules of court and where no special provision is therein

⁹ Tristram and Cootes Probate Practice 4th Supplement to the 32nd ed (2024); rule 51.

¹⁰ Rule 62 of the 1954 Rules.

¹¹ Rule 20.

¹² Rule 26.

¹³ Rules 15 and 16.

¹⁴ Non contentious Probate Rules 1991.

contained such jurisdiction 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 of England.” (my emphasis added)

- [31] It is therefore not disputed that the office holder in the respondent’s position was empowered by the NCPR UK up to 2017 and thereafter captured by rule 5 of the Probate Rules, to carry out the tasks of the judge in chambers as it relates to probate matters. As the court in the matter of **Ghafoor and ors v Cliff and ors**,¹⁵ in recognizing the authority of the registrar to carry out these probate related tasks opined, “...it is clear that in the fulfilment of many of their duties under the 1987 rules, [district probate registrars] are undertaking a judicial function.”
- [32] It is therefore pellucid, that in making determinations on applications filed, the respondent undertakes not an administrative function but a judicial or quasi-judicial one. This is clear when I consider the case law that has emanated from our courts where judges of the High Court have dealt with the decisions of registrars on the basis that the registrar has undertaken a judicial act.¹⁶
- [33] Therefore, the respondent’s contention that the appropriate avenue for appealing or questioning the decision of the respondent is by way of administrative action or Part 56 of the CPR, must be rejected. It must always be remembered that the remedy of judicial review is a remedy of last resort when there is no “suitable alternative remedy”¹⁷. So in an instance when a litigant is seeking an order that the registrar be directed to take certain steps (an order of mandamus), judicial review and administrative action would be appropriate as held in the case of **Rosemary Dawne Hodge Adams v The Registrar of the High Court**¹⁸ where the litigant sought the court’s intervention for the registrar to take certain steps in an application for a grant of letters of administration.¹⁹ However, where a registrar has taken a decision

¹⁵ [2006] EWHC 825 Ch at paragraph 88.

¹⁶ In the Matter of John Peter Richards (Anguilla Circuit) Probate No. 46/2011 Mathurin J (delivered 28th January 2014, unreported).

¹⁷ Director of Public Prosecutions v Chris Durham (also called Bouye) and ors [2024] UKPC.

¹⁸ AXAHCV2021/0027 (delivered 4th August 2021, unreported).

¹⁹ Ibid at paragraph 1.

provided for under the Probate Rules, a review of the order of the registrar is better dealt with by a full determination of whether the registrar could have come to that decision (a de novo hearing), as opposed to a review by way of the principles of administrative action which only consider not only the merits of the decision in respect of which the application is made, but the decision making process itself. As such:

“the purpose of the remedy [judicial review] ...is to ensure that the individual is given fair treatment...it is no part of the purpose to substitute the opinion of the judiciary or of individual judges for that of the authority charged by law with deciding the matter in question. The concern of the court is whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers.”²⁰

[34] Hence it is clear to me that having established that the decision of the respondent is not administrative in nature but rather judicial, the applicability of Part 60 of the CPR must be considered.

[35] Part 60 states as its scope at 60.1 that it deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated. The term “decision” is also defined at 60.1(2) as meaning “any award, decision, determination or order appealed against.” (my emphasis added)

[36] Therefore to rely on, and utilize, the provisions of this part, the party so doing must show that there was a decision made and that there is an enactment that allows for the appeal to be made.²¹

[37] It cannot be disputed, that the respondent decided in terms of directions to advertise the subsequent grant by the appellants and for the appellants to take active steps to have the caveat removed by seeking the intervention of the court.

²⁰ Atkins Court Forms – Administrative Court Vol 1 (October 2024) page 208.

²¹ Part 60.2 of CPR (Revised Edition) 2023.

- [38] The more difficult consideration is the necessity to identify the enactment which governs the application to be made to the court. Under rule 60.2, and in particular rule 60.2(3) (b), the claimant who files a claim under part 60, is mandated to state within its claim form the provisions of any enactment enabling an appeal to be made to the court.²²
- [39] To determine this, it is therefore once again necessary to reflect and conduct an analysis of the Probate Rules and whether the procedure received by way of section 11 of the Act, which existed prior to the advent of the Probate Rules would still apply in the existing legislative framework. This is of importance when I note with interest that the NCPR UK and the later 2024 amendment thereof provide specifically at rule 65 and subsection 1 thereof that “*an appeal against a decision or requirement of a district judge or registrar shall be made on summons to a judge*”.
- [40] It must be noted that in all major respects the Probate Rules as our existing “indigenous rules”²³ mirror the rules in force at that time (2017) in the United Kingdom. One of the major differences however was the right of appeal to a judge, which the United Kingdom has retained for the last 38 years. Thus, it becomes incumbent on me to once again consider the language of section 11 of the Act in this context.
- [41] The ordinary and plain language of section 11 makes it evident that its applicability can only present itself where two factors exist. Firstly, where there is no special provision in relation to probate already existing within the local context, and secondly that any such applicability that may be permitted must be applied within the parameters that they 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.’ At this juncture it must be noted that it has long been accepted by our

²² Ibid.

²³ Non Contentious Probate Practice in the English Speaking Caribbean (2nd ed.) 2000, Karen Nunez-Tesheria, p. 2.

courts that this section²⁴ relates to and addresses the reception of the procedural law and not substantive law of England, inclusive of English probate law, up to the present day.²⁵

[42] That being said, I am satisfied that there being no provision in the Probate Rules as to the procedure for the appeal process from the decision of the respondent, that the Territory of the Virgin Islands would receive the procedure as it applies in the United Kingdom as of today's date. In real terms, this therefore means that rule 65 of the NCPR UK (1987 and continued in 2024) is applicable and appeals from the decision of the respondent should be made to the judge on summons.

[43] That being the case, an applicant aggrieved by the determination of the respondent in matters relating to probate may rely on and invoke the provisions of rule 65 of the NCPR UK and file a claim pursuant to part 60 of the CPR.

[44] I therefore find that it was open to the appellants, upon receipt of the learned judge's decision declining jurisdiction (for reasons not before this Court), to have properly lodged an appeal **against that refusal itself** to this Court under section 30(1)(b) of the Act. Had they done so, the jurisdictional issue could have been conclusively resolved. Instead, by appealing directly against the registrar's decision, the appellants invoked a jurisdiction this Court does not possess or can call onto itself.

[45] To be clear, section 30 (1) (b) of the Act sets out the jurisdiction of this Court thus:

"an appeal shall lie to the Court of Appeal and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgment or order of the High Court and for the purposes of an incidental to, the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all powers authority and jurisdiction of the High Court." (my emphasis added).

²⁴ **Veda Doyle v Agnes Deane** HCVAP2011/020 (delivered 16th April 2017, unreported) at paragraph 9 per Perriera JA (as she then was); **Panacom International Inc v Sunset Investments Ltd and anr** Civil Appeal No. 14 of 1992 (delivered on 19th September 1994, unreported) per Flossaic CJ.

²⁵ *Mohammed v Mohammed* (1965) 12 WIR 125; *Non Contentious Probate Practice in the English Speaking Caribbean* (2nd ed) 2000, Karen Nunez-Tesheria, p. 6.

- [46] Decisions of the registrar, even when exercising delegated judicial functions under rule 7(2) of the NCPR, **do not and cannot constitute 'orders of the High Court'** for the purpose of section 30(1)(b). They are subject to primary appeal to the High Court itself. To hold otherwise would distort the intent of section 30(1)(b) which requires a High Court judgment as a precondition for appellate jurisdiction and thereby inviting direct recourse to this Court against non-appealable decisions.
- [47] Consequently, all appeals against the registrar's decisions made pursuant to the NCPR UK must be initiated in the High Court under part 60 of the CPR²⁶. To satisfy rule 60.2(3)(b) the enactment enabling the appeal is section 11 of the Act which incorporates rule 65 of the NCPR UK.
- [48] Where a High Court judge improperly declines to hear a part 60 appeal (for example on jurisdictional grounds), that refusal is itself an appealable "order" under section 30(1)(b). This ensures access to redress while preserving hierarchy.
- [49] I therefore find that this Court has no jurisdiction to undertake a direct review of the respondent's decision.
- [50] This appeal is therefore dismissed.
- [51] However, in coming to this decision, it was clear to me that the issues raised on what purported to be the substantive appeal in relation to the interpretation of two aspects of the Probate Rules may require some guidance for legal practitioners in the Territory of the Virgin Islands. I therefore wish to make some observations on the two discrete issues of advertisements for second or subsequent grants and the approach to be adopted in the event of the issuance of a caveat when no further steps are taken by the caveator to either file a probate action or seek directions in relation to the making of the grant, be it probate or letters of administration.

²⁶ **King v King** [2023] EWHC 2922 (Fam).

Court's Observations on the Appeal

[52] To appreciate the observations I am prepared to make it is important to understand the complaints made by the appellants and the basis for making those complaints.

[53] The appellants challenged the decision of the respondent that (a) advertising is required for second grants and that rule 15 of the Probate Rules is the basis for such requirement, and (b) in the face of the acknowledgment of service filed by the caveator, and absent an application for directions pursuant to Form P2 of the Probate Rules, it is for the appellants to make a strike out application of the acknowledgment of service in order to progress the application for a grant, and (c) that the caveat was still in force. The appellants by their 2nd Notice, therefore sought to have the following determined:

- (i) whether there is a requirement for advertisements to be placed in a newspaper prior to the issuance of *grant de bonis non administratus*; and
- (ii) whether an application is required to strike out the acknowledgement of service in response to a warning to Caveator when nothing further was done by the Caveator, in order for the probate application to continue.

Appellants' Submissions

[54] The appellants submitted that rules 62 and 63 of the Probate Rules provide that the caveat in the present case ceased to have effect not only by the effluxion of time but also because the caveator failed to state any interest contrary to that of the appellants together with the caveator's failure to issue and serve a notice of application for directions by the respondent or file a probate action, converting the matter to a contentious one which is by its nature outside the consideration of the Probate Rules.

- [55] The appellants contended that a caveat is only valid for 6 months in accordance with rule 61 of the Probate Rules but may be extended for a further 6 months by filing an application. The caveat was filed on 16th May 2022 and renewed once on 15th November 2022. Following the warning to the caveator, the caveator filed an acknowledgement but took no further prescribed steps.
- [56] Further the appellants suggested that the caveator having failed to make an application for directions, after, the expiration of the renewal of the caveat, is demonstrative of the caveator's lack of interest in so doing and was tantamount to a tacit non-objection to the issuance of the grant to the appellants.
- [57] On the issue of whether there is a requirement for an advertisement to be placed in a newspaper prior to the issuance of a *grant de bonis non administrates*, the appellants suggested that a *grant de bonis non* is a subsequent grant and a completely different type of grant from an initial grant of probate/administration which does require advertisements. The appellants pointed the court to rule 55 of the Probate Rules which identifies a clear distinction between a subsequent grant and a regular grant as defined by rule 2.
- [58] The appellants therefore submitted that while the Probate Rules require advertisements for initial grants, there is no such requirement for *grants de bonis non administratis*. The reason for this, as suggested by the appellants, is that the purpose of advertising is to put on notice any person who may wish to object to the issuance of a grant and to put any potential creditors of the estate on notice as to where they could direct their claims. It could allow any person who may claim priority to make application for the initial grant or was a creditor to the estate to have their claims known. These matters would therefore have been addressed during the initial application for a grant. However, in the instant case, the appellants maintained that given that the grant was made 12 years ago, any such potential creditor ought to have already taken steps to secure their interests, nor was there anyone who had a claim in priority to the appellants. Therefore, the appellants suggested that the

respondent acted ultra vires by insisting on the need to advertise, resulting in an excessive, costly delay borne solely by the appellants and the estate.

[59] Finally, counsel for the appellants turned her attention to the validity of the acknowledgment of service. While rule 63(4) is accepted, that a caveat shall remain in force in respect of which an acknowledgment of service has been filed, the appellants submitted that the acknowledgement is only open to a caveator having an interest contrary to that of the appellants. It was therefore submitted that since the caveator failed to show a contrary interest to that of the appellants in his filed acknowledgement, it was not even open to him to have in fact done so. However, in any event, the appellants further submitted that the acknowledgment was nonetheless irrelevant where the caveat was no longer of any effect due to the effluxion of time.

[60] It was therefore submitted by the appellants that the respondent's indication that there was a need for a probate action to be commenced, or for the filing of an application to strike out the acknowledgement of service by the appellant, was unwarranted and unnecessary. For the appellants, in the circumstances of their application, the respondent was well positioned and empowered to make an order of her own volition in relation to the advertisement and the caveat and issue the grant accordingly.

Respondent's submissions

[61] On these distinct issues, the respondent submitted that despite the effluxion of time and the procedural omissions by the caveator, the caveat remained effective under specific conditions per rules 61-64 of the Probate Rules. The respondent cited the case of **Moran v Place**²⁷ upon which they placed reliance to explain the function of a caveat in probate proceedings. The respondent submitted that a caveat is a notice to the registrar of the court not to let anything be done by anybody in the matter of the will or the goods of the deceased without notice to the person who lodged the

²⁷ [1896] 44 WR 593.

caveat. Counsel for the respondent submitted that the function of the caveat in of itself establishes that once a caveat has been lodged, any person seeking to proceed with the probate must issue a warning to the caveator. At that point if the caveator wishes to maintain their objection, they must acknowledge.

[62] The respondent submitted therefore that while the caveat was not renewed after the initial renewal on 15th November 2022 the automatic effect of the filing of the acknowledgement of service was that the caveat remained in effect and would continue to do so unless there was an order of the court to the contrary. The respondent therefore relied on rule 63(4) of the Probate rules for this proposition and maintained that the caveat does not lapse merely because of the passage of time.

[63] As for the caveator's alleged failure to state a contrary interest, the respondent submitted that any 'deficiencies' of the acknowledgment did not without more, invalidate the caveat or remove the appellants' obligation to provide notice of such removal. The respondent further submitted that the appellants' contention that the caveator's failure to apply for directions renders the caveat invalid is incorrect since rule 62(3) only applied when a caveator lacks a contrary interest. The caveator was not required to seek directions, and their omission did not render the caveat invalid. The respondent insisted that additional conditions should not be inferred into the Probate Rules when, read as a whole, they are clear.

[64] On the issue of the need for an advertisement on a subsequent grant, the respondent submitted that the procedural requirement for advertisement applies to subsequent grants. A *grant de bonis non* falls within the general category of grants under the Probate Rules and the procedural requirement for advertisement applies, ensuring compliance with the legislative framework governing probate administration. Counsel for the respondent pointed to rule 59, which provided the necessity for the publication of an advertisement, and submitted that it was evident that it in fact applied to all grants, no exception having been stated. Counsel for the

respondent suggested that had the intention been to exempt certain grants, the rules would have expressly provided for it. The absence of such an exception confirmed that advertising is a fundamental and mandatory step in the probate process.

Advertisement of Second or Subsequent Grants

[65] Under the Probate Rules, and particularly rule 55, it is clearly stated which grants are considered second or subsequent grants. These are a grant *de bonis non administratis*, a cessate grant and a double probate grant. By rule 56(2) the procedure to be followed for the application for a *de bonis non administratis* (which is applicable to the appellant's case) is set out clearly. For this exercise, I set out the relevant aspects of rule 56 hereto:

“(2) Subject to subrule (4), a person who seeks a grant *de bonis non administratus* shall file at the registry the **usual papers for a grant of letters of administration** under rule 9 or rule 13 as the case may be, including:

- a) the original grant or where the original grant is not available a filed copy of the grant;
- b) a filed copy of the original will marked by the second grantee and the person before whom the oath is sworn; and
- c) a declaration and account of the estate limited to a description and value of the property to be administered by the second grantee in accordance with Form P6 and in case of the Territory of the Virgin Islands Form P6A”. (my emphasis added)

[66] Subsection (3) then goes on to deal with the contents of the affidavit in support of such an application and at subsection (4) the rule clearly states the exceptions in applications of this nature thusly:

“Where an application is made for a grant *de bonis non administratus*

- a) if the deceased died testate, **an affidavit of due execution is not required to be filed with the application; and**

- b) **the death certificate of the deceased in respect of whose estate the application is made is not required to be filed.”**
(my emphasis added)

[67] Thus, when the whole context of rule 56 is considered, it sets out the following: i) that an application for a subsequent grant must have the usual papers whether such an application is under an intestacy or under a will (subsection 2), and ii) there are two clearly identified requirements which are not needed for those subsequent grants, an affidavit of due execution where there is a will and the death certificate of the deceased (subsection 4).

[68] There are no other exceptions and as such it must be pellucid that as illogical as it may appear, it was not open to the respondent to disregard rule 15 which made the specific provision for the advertisement of a grant of probate or a grant of letters of administration and rule 59 which states in mandatory terms that a grant shall not be issued unless advertised. There having been no exception for the advertisement of the subsequent grant in the manner of the other exceptions, there can be no other interpretation than the clear finding that the requirement for the advertisement remains for second or subsequent grants. While this may appear duplicative where an estate was properly advertised during initial probate, any modification must come through legislative amendment rather than judicial discretion. The respondent properly applied the rules as written, though this outcome highlights a potential area for procedural reform.

Duration of a Caveat and the Acknowledgment of Service thereto

[69] By rule 61 of the Probate Rules, a party who wishes to show cause against the sealing of a grant is entitled to enter a caveat and the '*court **shall not** allow any grant to be sealed (other than an emergency grant) if it has knowledge of an effective caveat....*' (my emphasis added)

[70] The appellant in this matter has argued that the conjoint effect of the following circumstances gave the respondent sufficient power to determine that the caveat has fallen away:

- (i) the caveat was filed on 16th May 2022 (this was extended by notice on 15th November 2022);
- (ii) there was a warning to caveator on 15th February 2023;
- (iii) there was an acknowledgement of service on 28th February 2023 – which did not contain a contrary interest as required by the warning.

[71] In considering the appellants' arguments on the validity of the caveat, their argument was two-pronged. Firstly, there was a failure to state a contrary interest by the caveator in his acknowledgment of service which meant, without more, that the respondent was entitled to consider that the caveat had fallen away, and secondly the grant could therefore be issued with no further action being required on the appellants' part.

[72] However, when I assess the substance of the argument, there is a fundamental flaw which is based on the total misinterpretation of rule 62 as it relates to caveats.

[73] It is not disputed, that upon the filing and service of a warning to the caveator, the caveator has two options available to them. They can either file an acknowledgment of service or file for an application for directions. The heavy weather made by the appellants seemed not to appreciate that the Form P22 which is to be filed as the acknowledgement of service is exactly as stated in the acknowledgment of service filed by this caveator, the subject matter of this action. It may therefore be useful to consider that form here and how the same was completed on behalf of the caveator.²⁸

²⁸ The underlined words as they appear on the Form P22 attached to the Probate Rules as the instructions for the person completing the same.

FORM P22 (b) – CAVEAT ACKNOWLEDGEMENT

Rule 62 (2), 65 (8), 66 (5), 69 (3)

British Virgin Islands

Claim No BVIHPB 2012/0092

THE EASTERN CARIBBEAN SUPREME COURT (Non Contentious
Probate and Administration Estates) Rules 2017

In the Estate of James Archibald Hodge Deceased
ACKNOWLEDGEMENT OF SERVICE

FULL NAMES AND ADDRESS OF PERSON WARNING

ETHELYNE HODGE and ELVIN HODGE the daughter and son respectively of the deceased James Archibald Hodge through their legal practitioners Creque Global Group of Mandar House Johnson's Ghut Road Town Tortola in the Territory of the Virgin Islands **(here set out the interest of the person warning as shown in the warning)**

FULL NAMES AND ADDRESS OF CAVEATOR

EVERAD ADELSON HODGE of 14439 East Glenwillow Road Missouri City Texas 77489 United States of America, the lawful child of the deceased James Archibald Hodge who is entitled to share in the estate of the deceased. **(here set out the interest of the caveator, stating the date of the will (if any) under which such interest arises)**

The above-named caveator acknowledges service of the Warning dated on the 15th day of February 2023

Dated the 28th day of February 2023

.....signature of counsel.....

Filed by (name of Attorney at law) Attorney-at-law for the Caveator whose address for service is (address) or the Caveator in person whose address for service is (address)

This acknowledgement of service must be filed at the registry and a copy served on the person citing.

- [74] When one considers the wording of the form and how the same was completed, all that is in fact required of the person acknowledging the warning to caveat is that they are to '**set out the interest of the caveator.**' This instruction is clearly distinct from the wording contained in rule 62 which sets out what the person issuing a warning to a caveat must do. At subsection 62(1), and in particular at (c), caveator is required to file an acknowledgment of service and give *particulars of any contrary interest in the estate*. This wording of a contrary interest is also contained in rule 62(2) where it provides that the caveator who has a contrary interest is to file an

acknowledgment of service which is to be served on the person warning, and rule 62(3) if there is no contrary interest, then an acknowledgment of service is not filed but rather there is a need to file an application for directions.

[75] However what is also clear from the reading of this rule, is that any acknowledgment to the warning must be in the form as provided in the Probate Rules and once that acknowledgment is filed and served that provides the evidence without the need for more, that the caveator has a contrary interest.²⁹ At that juncture the caveat then becomes '...permanent and cannot be withdrawn by the caveator without an order ...'³⁰ and remains in place until some positive action is taken by the caveator or the applicant for the grant. It is therefore at this stage that the logic of rule 63(4) then becomes apparent.

[76] Rule 63(4) states in its entirety, that '***unless the court otherwise by order directs, a caveat in respect of which an acknowledgment of service has been filed, shall remain in force until the commencement of a probate action.***' (my emphasis added) Thus there is no ambiguity; once properly acknowledged, a caveat persists until either (1) the caveator initiates probate proceedings (and the matter becomes a probate action outside of the remit of the registrar), or (2) the court orders its removal on application. Thus, the acknowledgement of service cements the caveat in place. If the caveator fails to act, then the court can be asked to intervene and make an order regarding the continued validity of the caveat. It cannot be open to the respondent on her own initiative to make that determination. It was therefore well within the respondent's rights to take the position that the appellant, who wished to have the caveat removed, should take the step to commence the necessary proceedings to have the same removed, upon notice to the caveator.

²⁹ **Kerry v Kerry** (1961) 4 WIR 70 per McShine J.

³⁰ Chris Whitehouse and Lesley King, *Tolley's Administration of Estates*, (published April 2025), H2.3.

[77] The structure created by the rules serves three important policy objectives: (1) it prevents unilateral nullification of caveats, (2) it maintains the integrity of the warning system, and (3) it ensures that disputes are properly adjudicated.

[78] I therefore hope that this information is of some assistance to counsel in navigating the Probate Rules on these two issues. While this interpretation may appear rigid, it reflects the careful balance struck by the rules between: (1) efficient estate administration, (2) the protection of legitimate interests, and (3) due process requirements. Where the systems create practical difficulties the solution lies in legislative amendments, clear practice directions for handling prolonged caveats or time limits for caveators to commence proceedings. Absent such modifications the Court must apply the rules as written.

Conclusion

[79] For the foregoing reasons (1) the advertisement requirement applies equally to subsequent grants, (2) the caveat remained properly in effect following the acknowledgement, and (3) the respondent's approach of recognizing the continuing validity of the caveat accorded with both the letter and the spirit of the Probate Rules.

Disposition

[80] The appeal is dismissed with costs to the respondent to be assessed before a judge of the High Court if not agreed within 21 days of today's date. The appellant retains

the option to apply to the High Court for removal of the caveat.

I concur.
Vicki-Ann Ellis
Justice of Appeal

I concur.
V. Dexter Theodore
Justice of Appeal [Ag.]

By the Court

Chief Registrar