

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 17/2014

APPLICATION NO 29/2015

BETWEEN	SONIA EDWARDS (deceased) (Represented by her personal representative Enola Dunkley)	1st APPELLANT
AND	CAROLYN BECKFORD	2nd APPELLANT
AND	DERRICK BECKFORD	3rd APPELLANT
AND	NEVILLE RICHARDS	4th APPELLANT
AND	STEPHANIE POWELL	RESPONDENT

Mrs Tameka Jordan instructed by McDonald Jordan and Co on record for the 1st appellant

Mr Raymond Samuels instructed by Samuels and Samuels for the 2nd, 3rd and 4th appellants

Mr William McCalla instructed by Robinson, Phillips and Whitehorne for the respondent

IN CHAMBERS

2 and 15 July 2015

BROOKS JA

[1] This is an application by attorneys-at-law, McDonald Jordan and Co, who appear on the record for the first appellant, the estate of Sonia Edwards (deceased), to have

their names removed from the record as such. Their names were placed on the record when they filed a notice of change of attorney on 13 January 2015.

[2] The further amended application to remove their names was filed on 14 April 2015. The governing principle in such applications is that the relevant parties are made aware of the application and that there is no undue prejudice to any of the parties as a result of the removal.

[3] The application was heard on 2 July 2015 and the court was satisfied that all parties had been made aware of the application and were either present or represented, and there was no factor that prevented the application from being granted. Based on that satisfaction I ordered that the application be granted. I, however, reserved the ruling in respect of the issue of costs. This was due to an application by the second, third and fourth appellants for costs thrown away to be awarded to them. The costs thrown away did not directly flow from the application but rather from the earlier filing of the notice of change of attorney.

The background facts

[4] The record shows that the decisions being appealed from were made in the Resident Magistrate's Court on 3 September 2012. A document containing the notice and grounds of appeal was filed on 11 September 2012 in respect of each claim by Messrs Samuels and Samuels who then appeared for all the appellants. Sonia Edwards died after the appeals were filed. Letters of administration were granted on 11 April 2013, to Ms Enola Dunkley in Sonia Edward's estate.

[5] The appeal was set for hearing on 26 January 2015. On 25 June 2014, the registry of this court sent out notices of the hearing date to Samuels and Samuels and to the attorneys-at-law for the respondent.

[6] On 7 January 2015, McDonald Jordan and Co wrote to the registrar of this court indicating that they had just been retained to act on behalf of the appellants and asked that the matter be removed from the hearing list. The letter erroneously stated that the appeal had been listed for hearing on 12 January 2015. On 13 January 2015 McDonald Jordan and Co filed the notice of change of attorney mentioned above. It indicated that that firm appeared on behalf of all the appellants. The notice of change was not served on Samuels and Samuels.

[7] Despite the notice of change, the appeal appeared on the cause list for the week of 26 January with Samuels and Samuels as the attorneys-at-law for the appellants. The week before 26 January, the weekly list for the week for 26 January 2015 was published bearing both McDonald Jordan and Co and Samuels and Samuels as appearing for the appellants.

[8] On 23 January 2015, the registry informed Samuels and Samuels that the case would be removed from the hearing list for the week of 26 January 2015. It is not entirely clear whether the removal was occasioned by the request by McDonald Jordan and Co or by the fact that there was confusion as to the appellants' representation.

[9] The removal came as a surprise to Samuels and Samuels, who were of the view that they still represented the second, third and fourth appellants. Samuels and

Samuels made contact with those appellants who confirmed that they had not changed their representation. Affidavits were filed by each of them to that effect.

[10] Samuels and Samuels, by letter dated 3 February 2015, asked McDonald Jordan and Co to clarify their position. On 4 February 2015 McDonald Jordan and Co filed an amended notice of change of attorney, indicating that they only represented the first appellant.

[11] In an affidavit filed on 1 July 2015 Mr Norman Samuels of Samuels and Samuels deposed that the second, third and fourth appellants incurred costs in having to settle the issue of representation, "as well as the cost of preparation of an Appeal which on the eve of the hearing was taken off the list". Mr Samuels did not particularise those costs.

The submissions

[12] In the application for the removal of name, Mr Raymond Samuels submitted on behalf of the second, third and fourth appellants that they should recover the costs thrown away as a result of McDonald Jordan and Co having filed an inaccurate notice of change of attorney. He argued that an order for costs should be made as a consequence of the present application.

[13] Mrs Jordan, on behalf of McDonald Jordan and Co, submitted that an award of costs could only follow the event which was the application before the court. She argued that the costs that Mr Samuels contended were incurred by the second, third

and fourth appellants, were not a consequence of the application to remove name and therefore could not be awarded at this time.

[14] Learned counsel submitted that the removal of the appeal from the list for 26 January was inevitable as the estate of Sonia Edwards had not been regularised on the record. She argued that the adjustment to the record required a formal application to substitute the estate for Sonia Edward's name on the record.

[15] Mr McCalla, for the respondent, although not addressing the issue of costs, informed the court that the execution of the judgment of the Resident Magistrate's Court (involving the distribution of a deceased person's estate) was well under way and it is puzzling that there is still an appeal in place.

[16] No authority was cited by any of the parties in respect of these submissions.

The analysis

[17] It must be stated at the outset of this analysis that there is no issue as to the costs related to the application to remove the names of McDonald Jordan and Co from the record. The issue is whether the costs, associated with McDonald Jordan and Co placing their names on the record, may be fixed to the application to remove the names. In this regard, the answer should be in the negative. These were two separate actions at two separate stages of the litigation.

[18] The substitution of the names of McDonald Jordan and Co for Samuels and Samuels were costs in the appeal. The costs incurred by the second, third and fourth

appellants in investigating the error and having the situation clarified would be costs for which the first appellant would be liable. Until it is proved otherwise, McDonald Jordan and Co must be taken to have acted on the instructions of the first appellant. The second, third and fourth appellants are entitled to seek those costs at the disposal of the appeal or on a prior specific order of the court.

[19] These are not costs "thrown away" as a result of this application to remove the names of the attorneys-at-law. Nor can these be treated as wasted costs, as the procedure concerning wasted costs, which is set out in part 64 of the Civil Procedure Rules, has not been followed.

[20] If the first appellant is made liable in costs to the other parties for the development concerning McDonald Jordan and Co, it would be for the first appellant to seek compensation or re-imburement from McDonald Jordan and Co, in the event that that firm had erroneously placed their names on the record for all the appellants.

[21] In the circumstances, Mrs Jordan is correct in her submissions that the costs claimed in Mr Samuels' submissions are not costs in this application.

ORDER

No order as to costs in the application to remove names from the record.