



[2013] JMSC Civ 163

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 HCV 04707

BETWEEN	GLORIA McLEAN	APPLICANT
A N D	THE ADMINISTRATOR GENERAL OF JAMAICA	RESPONDENT

Latoya Renae Stephenson for the Applicant

Geraldine Bradford for the Administrator General

Heard in Chambers: September 4, 2013

APPLICATION FOR APPOINTMENT OF REPRESENTATIVE OF DECEASED'S ESTATE AS DEFENDANT TO CLAIM – SECTION 12 OF ADMINISTRATOR GENERAL'S ACT – RULES 21.1, 21.2 AND 21.7 OF C.P.R. – INTERLOCUTORY APPEAL – LEAVE TO APPEAL

Anderson, K., J.

Ruling of Court

[1] The applicant herein, had applied by means of a Notice of Application for Court Orders, which was, with the approval of the court, amended during the hearing of that application in chambers, before me, for court orders. Said application for court orders was filed without there being a claim as yet in existence, brought by the person named as applicant herein, as against anyone. The said application, when filed, had named the person now designated as 'the applicant' as 'the claimant.' For the purposes of this ruling, she will hereafter be termed as 'the applicant.'

[2] Said application for court orders, was filed on August 27, 2013. By virtue of the amendment thereof, as was permitted by this court, the 'claimant' was instead

designated as, 'the applicant' and The Administrator General of Jamaica was designated as 'the Respondent.' That amendment also permitted the Administrator General of Jamaica to be the sole respondent to that application. The amended as granted, was not opposed, but the substantive amended application was, by the Administrator General.

[3] The amended application for court orders, sets out the applicant's request of this court, for the following orders to be made:

- i) The appointment of, 'The Administrator General of Jamaica to represent the personal representative of the estate of Winston Robinson, deceased, late of Lorrimers District, in the parish of Trelawny, as the defendant in the claim against their estates by Gloria McLean; and
- ii) That the time for serving the Administrator General shall be abridged to the date of the hearing of this application.

[4] The original application was served on the Administrator General of Jamaica, on September 2, 2013 and the hearing of that application came before this court, on September 4, 2013. As such, since the said application was short-served, the application for abridgement of time was made. There was no objection to that aspect of the application, made by the Respondent and therefore, the court heard the said application, even though the same had been served without the required seven clear days notice having been provided.

[5] There was a single ground for the amended application, set out. It reads as follows:

'That it is proposed to join the Administrator General of Jamaica to this claim in respect of the estate of Winston Robinson, deceased late of Lorrimers District in the parish of Trelawny, who died on or around January 2013, but in respect of whose estates no personal representative has been appointed for more than three months after his death or at all, and in respect of whose estate no personal representative has been ascertained or can be readily ascertained after diligent searches and enquiries.'

[6] The claim which the applicant wishes to pursue, is a claim arising from the death of one Winston Robinson in a traffic accident involving vehicles which were then, on the one hand, being driven by the applicant and other hand, owned and driven by Mr. Winston Robinson, deceased. That accident occurred on September 6, 2007 and thus, in the affidavit of the applicant's counsel – Ms. L. Stephenson, which was filed in support of the said amended application, Ms Stephenson has deposed to the urgency of said amended application as being that the claim would have become statute-barred, as of September 6, 2013.

[7] Although not specifically so stated in the affidavit of attorney Stephenson, which was the only affidavit evidence filed in support of the amended application, it is clear to this court and indeed, was made clear, during oral submissions advanced by Ms. Stephenson in support of her client's amended application, that her client wishes to make claim against the estate of the deceased – Mr. Winston Robinson, arising out of the injuries, loss and damage suffered by the applicant, as a consequence of the said traffic accident.

[8] Attorney L. Stephenson has further deposed to having made searches and enquiries at the Resident Magistrate's Court for the parish of Trelawny and the Supreme Court Registry and also, of the deceased's widow, to ascertain whether any personal representative has been appointed to represent the estate of the deceased, but, she has not been able to ascertain whether any such representative has been appointed.

[9] The applicant's counsel made it known to this court, during oral submissions which she made on her client's behalf, that she has been also unable to ascertain who are the persons, other than the deceased's widow, who are by law, beneficiaries of the deceased's estate. As such, only the Administrator General of Jamaica was served with any notice of the applicant's amended application.

[10] For the purposes of her client's amended application, the applicant's counsel placed significant reliance on Section 12 of the Administrator General Act. For present purposes though, that Section of that Act, although entitling the Administrator General,

in certain prescribed circumstances to apply for letters of administration in the estate of a deceased person, to put it simply, has absolutely no applicability to the present situation, as far as this court can discern, for the affidavit evidence which has been filed in support of the amended application. This is because this court does not know whether the deceased died testate or intestate, or whether letters of administration has been taken out by anyone, either within three months or such longer period as the court to which application for administration has been made, may have directed. This court also does not know whether the deceased died leaving a will, but leaving no executor. As such, Section 12 of the Administrator General Act cannot avail the applicant. Sufficient evidence must always be provided to a court by a party who desires that court to grant a discretionary remedy in his/her or their favour. The applicant has wholly failed to produce such sufficient evidence in respect of her amended application.

[11] **Rule 21.2(1) of the Civil Procedure Rules** (hereinafter described as ‘the CPR’), provides that an application for an order appointing a representative party may be made at any time, including a time before proceedings have been started. Furthermore, other paragraphs of **rule 21.2 of the CPR**, go on to provide that such an application may be made by any party or by any person who is likely to be a party to proceedings. That is what has been done by the applicant, as she is likely to be the claimant in any future claim pertaining to the relevant facts as alleged. An application such as this, must be supported by affidavit evidence and must identify every person to be represented, either individually, or by description, it is not practicable to identify a person individually.

[12] To this court’s mind therefore, the applicant has only partially complied with that last-mentioned rule – **rule 21.2(3) of the CPR**, this insofar as the persons to be represented are not, in respect of the amended application, even so much as described. The application should have set out that it is sought to have the Administrator General appointed as a defendant, to represent the beneficiaries of the deceased’s estate and affidavit evidence should have been led to show why it was impracticable to identify every person to be represented, individually (this assuming, as this court can do no more than, at this stage, that it was impracticable to do so).

[13] This court is of the considered opinion that **rule 21.7 of the CPR** is the applicable rule of court to be utilized in a situation such as this, as that rule relates to, as the heading above that rule, makes clear – ‘**Proceedings against estate of deceased person.**’ The applicant though, has not led any evidence to satisfy this court that **rule 21.7 of the CPR** can avail her as regards her amended application. This is firstly because it is unknown to this court whether the deceased has no personal representative and also because, this court does not know whether the Administrator General can fairly and competently conduct proceedings on behalf of the deceased’s estate and has no interest adverse to that of the estate of the deceased person. These things are unknown to this court, because the applicant has, in support of her amended application, led no evidence before this court, in respect of either such, which are both, by virtue of **rule 21.7(2) of the CPR**, conditions precedent to be proven by an applicant, in order for an application such as the amended one herein, to be granted by this court.

[14] As such, this court, following on the opposition to the amended application, as was advanced by counsel for the Administrator General, denied that amended application. Leave to appeal was, at the hearing of that amended application, after same was denied by the court, sought, but denied. This court does not believe that any proposed appeal has any real chance of success. See rule 1.8 of Section 1 of the Court of Appeal rules which makes it clear that this is a requirement to be established by a party who seeks leave to appeal, if that party wishes such application to be successful.

[15] This court had provided these reasons, following on notification by the Court of Appeal, that on September 6, 2013, a Notice of Appeal was filed in respect of my ruling on the amended application and that said Notice of Appeal is recorded as Civil Appeal No. 72 of 2013.

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Hon. K. Anderson, J.