

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2021-02995**

**IN THE MATTER OF AN APPLICATION BY ANTOINETTE JOANNE
THORNE-ALEXANDER AND ANDREW THORNE TO SWEAR TO DEATH OF
JOHN THORNE WHO WAS LAST SEEN ON THE 2ND SEPTEMBER 2014**

Applicants

Before Deputy Registrar (Ag.) Mr Raymond A. Roberts

Date of Delivery: 31 January 2022

Appearances:

Ms Reah Sookhai and Ms Skeeta John Attorneys-at-law for the Applicants

Stacey Murphy Attorney-at-law for Interested Party

**RULING ON APPLICATION FOR LEAVE TO SWEAR DEATH OF
JOHN THORNE OTHERWISE JOHN ADRAL THORNE**

Background and evidence of disappearance

1. By notice of application filed on the 7th day of September 2021, the Applicants Joanne Thorne-Alexander and Andrew Thorne applied to the Court to swear to the death of the John Thorne otherwise John Adral Thorne (hereinafter referred to as John Thorne). Two affidavits in support of the application were filed on even date.
2. John Thorne of No. 291 Strobus Avenue, La Resource, D'Abadie, Arouca, was last seen on the 2nd September, 2014 in the island of Trinidad in the Republic of Trinidad and Tobago.
3. John Thorne was born on the 20th October, 1940 to Emelda Thorne and Phillip Thorne at Coora Road, Siparia and is a national of the Republic of Trinidad and Tobago. He was also a citizen of the United States of America and Trinidad and Tobago.
4. John Thorne married Shirley Thorne on the 26th of December 1960 at St. Margaret's Church, Belmont and had four children born to him, namely:
 - i. Michael Thorne - Born on the 29th of May 1961;
 - ii. Antoinette Joanne Thorne-Alexander - Born on the 24th of July 1962;
 - iii. Andrew Thorne – Born on the 9th of January 1964; and
 - iv. Ancil Alexander Thorne – Born on the 22nd of May 1965.
5. John Thorne's marriage was dissolved on the 7th of November 1975, and he thereafter remarried Cynthia Rochelle Daniels-Thorne. Cynthia Rochelle Daniels-Thorne died on or around 9th August 2011.

6. The evidence of the Applicants indicated that in or around the 2nd day of September 2014, the Deceased was last seen by his son Michael Thorne and his daughter-in-law Shivon Thorne. Michael and Shivon Thorne last saw the Deceased at his residence and fixed abode situated at 291 Strobos Avenue, La Resource South, D'Abadie, Arouca.
7. On or around the 5th of September 2014, news was received that John Thorne could not be found and/or contacted. His immediate family members immediately visited his fixed abode situated at 291 Strobos Avenue, La Resource South, D'Abadie, Arouca, searching for him but to no success.
8. John Thorne's Suzuki Grand Vitara Registration number PCA 7840 was spotted at the Plaza De Montrose in the town of Chaguanas while searching for him. The searches proved unsuccessful, and as a result, missing person reports were made to the Chaguanas Police Station and to the Arima Police Station. Copies of the reports were annexed to the affidavits of the Applicants.
9. In or around September 2014, the family of John Thorne was instructed by the investigating officers to view a surveillance tape at Chaguanas Police Station. The surveillance tape was obtained from Jack's Tyre Shop in Chaguanas. On the morning of 3rd September 2014, the tape revealed one male parked the said vehicle into the car park of Plaza De Montrose and was wiping off prints from the vehicle. On or around 5th September 2014, the tape further revealed that at or around 9:30 am, another male eventually went into the said vehicle and drove off with it. However, at no time were any of the males identified as the deceased. John Thorne has not been found, and police investigations are still ongoing by the Central Division Criminal Investigations Department and the Homicide Investigations Bureau.

Reasons to support Application

10. The evidence of the Applicants indicated that John Thorne's estate comprises properties and assets in Trinidad and the United States of America.
11. The beneficiaries of John Thorne estate cannot take charge of the financial affairs and his properties, which are rapidly deteriorating.
12. Part of the John Thorne estate comprises a two-storey house situated at the corner of Railway Road and Southern Main Road, Enterprise, Chaguanas. Before the disappearance, tenants occupied both stories of the said property. However, after the disappearance, the said property has stopped generating any income since the beneficiaries of the estate were unable to take charge of the previous and current tenants. They are unmanageable and unwilling to pay rent. Resultantly, the property has fallen into a state of disrepair.
13. Further to this, there are matters and issues at various financial institutions which require immediate attention. However, the beneficiaries to the estate possess no authority to intervene on John Thorne's behalf.
14. The beneficiaries to the estate have made reasonable efforts to search for John Thorne since his disappearance. John Thorne had no history of mental illness and mental incapacity. Family, friends, neighbours and interested persons have had no sight nor heard from John Thorne since the 2nd day of September 2014.
15. To date, the whereabouts of John Thorne remains unknown.

Reliefs sought

1. A Declaration that John Adral Thorne, also known as John Thorne of No.291 Strobos Avenue, La Resource, D'abadie, Arouca, in the island of Trinidad in the Republic of Trinidad and Tobago be presumed dead in absentia.
2. A Declaration that the Applicants Antoinette Joanne Thorne-Alexander and Andrew Thorne be at liberty to swear to the death of John Adral Thorne, father of the Applicants, as having occurred on or since 2nd September 2014.
3. An order that the Registrar General be authorised and/or empowered to issue a death certificate for the said John Adral Thorne.
4. Further and/or alternatively, a Declaration that the Applicants Andrew Thorne and Antoinette Thorne be at appointed Guardians of the estate of John Adral Thorne, who went missing on the 2nd September, 2014 in absentia.

Further Evidence considered by this Court

5. On the 25th October 2021, at the first hearing in this matter, Michael Thorne, the sibling of the Applicants, attend and indicated his interest in the matter and desire to obtain Counsel to represent his interest. The Applicants and the Interested Party Michael Thorne, appeared before this court virtually and were ordered as follows:
 - i. Affidavit of Michael Thorne to be filed on or before 19th November, 2021.
 - ii. Affidavit of someone other than a family member (e.g. neighbour, friend of John Thorne) regarding the disappearance of John Thorne to be filed on or before 19th November, 2021.
 - iii. An advertisement be placed in a two (2) daily newspapers of general circulation in Trinidad and Tobago for two consecutive weeks to make enquiries of anyone with knowledge of the whereabouts of John Adral Thorne or John Thorne. The advertisement shall include the most recent photograph clearly showing the face of the John Adral Thorne or John Thorne.
 - iv. A copy of the advertisements and any responses to same are to be provided to the Court by supplemental affidavit. Supplemental Affidavit to be filed on or before 26th November, 2021.
 - v. The Chief Immigration Officer Trinidad and Tobago Immigration Department is hereby summoned to appear before this Court on the next date of hearing to confirm whether any application was made by John Adral Thorne for the reissuance of a Trinidad and Tobago passport and to produce any records of John Adral Thorne departing or arriving in Trinidad or Tobago in or about September 2014 to present. Any relevant documentation to be sent via email to the JSO to the Deputy Registrar Ag. @ Team.Reg.POS2@ttlwcourts.org on or before the next date of hearing.
 - vi. Officer in Charge Central Division Criminal Investigation Department, Chaguanas Police Station is hereby summoned to appear before this Court on the next date of hearing, to provide information in relation to the investigations into the disappearance of one John Adral Thorne also known as John Thorne. Any relevant documentation to

be sent via email to the JSO to the Deputy Registrar Ag. @
Team.Reg.POS2@ttlwcourts.org on or before the next date of hearing.

vii. Adjourned to 6th December 2021 at 9:00 am via electronic hearing.

35. By affidavit sworn to and filed on the 18th November 2021, Michael Thorne deposed *inter alia*:

- a. He made the affidavit pursuant to an order and responded to the application and affidavits of the Applicants filed on the 7th day of September, 2021.
- b. He is the son of John Adral Thorne and the brother of the Applicants.
- c. The last time he saw his father was on the 2nd September 2014. On that day, he, his wife and his father visited Trinidad and Tobago Electricity Commission located in Couva. After, he drove his father to his residential address in D'abadie and thereafter continued his work duties of transporting children to and from school.
- d. On or about the 5th day of September 2014, he received a call from his aunt, Catherine Thorne, who enquired about his father's whereabouts. He immediately called his mobile and house phone but received no response. As a result, he drove to his father's residence and found he was not at home. He and his wife then drove to his father's property located at Railway Road Chaguanas. He enquired from his cousin Carlos Thorne about his father's whereabouts, but he responded that he did not see him. After, they continued the search around Chaguanas. He decided to make a missing person's report of his father's disappearance at the Chaguanas Police Station. En route to the station, he saw his father's vehicle parked off Chaguanas Main Road in a parking lot of Plaza De Montrose. He proceeded to the vehicle and confirmed it was his father's vehicle, and took pictures. On arrival at the Chaguanas Police Station, he informed the police officers of his father's disappearance. The police officers informed him to make a report at the Arima Police Station. He received a police report dated the 5th day of September 2014 from the Chaguanas and Arima Police Station.
- e. In reply to paragraphs 18 and 19 of the affidavit of Andrew Thorne, he stated that Johnny Abraham was not present and that the applicant did not make a report.
- f. He stated that he contacted the United States of America Embassy to inform them about his father's disappearance. As a result, he visited the United States of America Embassy with his father's passports and identification documents. Representatives informed him of the Embassy that his father did not leave the country and took Inspector Johnny Abrahams contact details for their information.
- g. He said that during the years 2014 to 2021, he reported the disappearance to the Trinidad and Tobago Police Service, Chaguanas, Criminal Investigation Department (C.I.D.) and inquired about the status of the investigation. On the 10th day of September, he received a report from the C.I.D. that the matter was under investigation.

- h. On the 26th day of May 2020 and the 8th day of February 2021, he received a letter from the Central Division of the Chaguanas Police Station, which stated that no useful information had been obtained regarding the disappearance.
 - i. No communication has been received from his father since the date of his disappearance. He has not heard from his father for a continuous period of seven (7) years and more, and that his father is presumed dead.
 - j. In response to his father's estate, he provided statements:
 - i. Unit Trust – the 1st day of December 2019 to the 29th day of February 2020 and the 1st day of April 2020 to the 30th day of June 2020;
 - ii. Republic Securities Limited – the 1st day of April 2020 to the 30th day of June 2020;
 - iii. Central Bank of Trinidad and Tobago – the 1st day of July 2020 to the 31st day of December 2020;
 - iv. Republic Bank Limited – the 11th day of February 2014; and
 - v. Charles Schwab – the 1st day of June 2021 to the 30th day of June 2021.
 - k. He stated that the body of his father could not be found. Therefore, there is nobody to confirm his death and thus no certification of death.
 - l. He said he did a diligent search among the papers and effects of his father for a Will or other documents of a testamentary character, and none was found.
 - m. Concerning paragraph 4 of the application, he objects to Andrew Thorne and Antoinette Thorne being appointed Guardians of the estate of John Thorne. He is desirous to be included in this application and any application relative to his father's estate.
 - n. He prays that the Court grant the relief sought in the notice of application save and except that he be named as an applicant, and he objects to the appointment of the applicants as guardians of his father's estate.
36. By affidavit sworn to and filed on the 19th of November 2021, Christine Edwards-Farrow said *inter alia*:
- a. She made the affidavit as a result of the order of the Court dated the 25th of October 2021. The affidavit is in support of the Applicants' application filed on the 7th day of September 2021.
 - b. In or around 1972, she and her husband moved to their home on Railway Road Enterprise Chaguanas. She was a housewife and took care of her household and seven (7) children.
 - c. In or around 1980, John Thorne moved into the neighbourhood to a house located on the corner of Railway Road and Southern Main Road, Enterprise Chaguanas. She learnt that John Thorne had four children. She said he presented to her as a very kind and peaceful person. He was a friendly neighbour and would always engage in conversation with her and her children when she took them to and from school. She knew him as a Pastor and people in the neighbourhood knew him well.

- d. Her family moved to Jonathan Street Cunupia. However, she kept ties to Railway Road and would often visit. On the occasions that he visited, she would see John Thorne and would chat.
 - e. She said John Thorne moved from Chaguanas to Arima and did not see him often. However, she said he continued pastoring in the church in Chaguanas.
 - f. In or around September 2014 friends from Railway Road informed her that it was rumoured that John Thorne had gone missing. She did not know what to make of it since she knew him as quiet and peaceful and never finding himself in any trouble. She then saw his disappearance being discussed on the Ian Alleyne show, which confirmed that the rumours were true.
 - g. After September 2014, she had not heard anything about John Thorne reappearing, nor did she ever see him again. So to date, she knows John Thorne to be still missing.
37. A supplemental affidavit of the Applicant Andrew Thorne was filed on 25th November, 2021 confirming that advertisements were placed in the Trinidad and Tobago Guardian Newspaper and the Trinidad Express Newspaper for two consecutive weeks which bore the most recent picture of John Thorne. The advertisement also included the mobile phone number of the Applicant directing that he be contacted if anyone knew of the whereabouts of John Thorne. The evidence of the applicant is that no one contacted him
38. On 6th December, 2021 Rodney Daniel, Immigration Office II appeared before this Court and gave the following evidence based on a search of the Immigration office records:
- a. There was no record of travel between September 2014 to present for John Adral Thorne otherwise John Thorne born 20th October, 1940;
 - b. The last Trinidad and Tobago passport issued in the name of John Adral Thorne bearing the number TA 642823 was issued on 29 September 2011 and expired on 26th September 2016.
 - c. Confirmed that John Adral Thorne was the holder of a United States of America issued passport bearing number #710186944, which expired on 5th February 2013. No records to indicate any further issuance of a United States of America passport.

Law

35. The main purpose of the application for leave to swear death is to obtain probate or administration of the estate of the deceased. The application for leave to swear death allows the applicant leave to swear to the death of the deceased in the affidavit leading to the Grant of Probate or Administration. The effect of the order for leave to swear death is that it is possible to apply for probate or administration in relation to the missing person. It should be noted that this type of order is more limited than a presumption of death declaration. A declaration of presumed death is conclusive of the fact, date and time of death and it is effective for all purposes against all persons.
36. An application for leave to swear death is made where an applicant for a grant cannot swear in his/her oath to the death of the deceased, and there is no direct evidence of his being dead, but only evidence from which his death may be presumed to have taken place.
37. Such a presumption may arise in the following instances:

- i. From the disappearance of the presumed deceased at or after a given time, and from the circumstances attending such disappearance, or from his not having been heard of for a prolonged period by those with whom he might reasonably have been expected to communicate; or
 - ii. From his having been on board a ship, which, from its non-arrival in port within a reasonable time, from the absence of tidings of any of those on board, and from other circumstances, is supposed to have been lost at sea; and similarly in the case of a missing or totally destroyed aeroplane.
38. In the case of an application for leave to swear to the death of a missing person, the court does not presume the death of the deceased; it merely gives the applicant leave to swear to the death. In the case of **In the Goods of Jackson (1902) 87 LT, 747**, Barnes J stated:
- “The court never presumed death, but gave the applicant for a grant leave to swear the death, and the applicant then had to swear to the fact. Parties had to prove their right to a grant, and they did not establish their right unless they made the necessary oath. The true principle in such cases was for the applicant to obtain leave of the court to swear in his or her belief that a person was dead.”
39. The question of whether a person is or is not to be presumed to be dead is generally speaking, of fact. In the case of **Chard v Chard (otherwise Northcott) [1956] P 259**, [1955] 3 All ER 721, Sachs J:
- “If a person has not been heard of for seven years by those who would be likely to hear from them then, if proper inquiries have been made and there is no evidence to the contrary, the person is presumed to be dead. However, the mere fact of a seven year absence is insufficient; it is the fact that the absence remains unaccounted for when one would not reasonably expect it to be if the person were alive that forms the basis of the presumption.”
40. In **Re Watkins [1953] 1 WLR 1323** at p. 1330, Harman J stated:
- “In the absence of statute, there is no magic in the mere fact of a period of seven years elapsing without there being positive evidence of a person being alive. It is generally speaking a matter in each case of taking the facts as a whole and balancing, as a jury would, the respective probabilities of life continuing or having ceased”.
41. It is necessary, in order to raise the presumption, that there should have been an inquiry and search made for the man amongst those who, if he was alive, would be likely to hear of him.
42. Therefore, to satisfy the court, all due inquiries are required and must be supported by affidavit (s) by family members or some other persons acquainted with the deceased who can corroborate the particulars.
43. The affidavit(s) in support must contain the following¹:
- i. The date and circumstances in which the 'deceased' was last heard of;
 - ii. His age;
 - iii. The applicant's belief that he is dead;

¹ Karen Nunez-Tesheira, *Non-contentious Probate Practice in the English-speaking Caribbean*, (2nd edn, 2004, The Caribbean Law Publishing Company Limited) 384-387

- iv. Details of the efforts made to find him including any advertisements, if any, which have been inserted (the newspaper clippings being exhibited);
- v. Whether any letters or other written communications have been received from him since the date of his disappearance;
- vi. Particulars of any bank account, including the last date on which they were operated;
- vii. Particulars of any insurance policies owned by the 'deceased' and whether notices of the application have been given to the companies concerned. (copies of the notices sent and any replies received should be exhibited and annexed);
- viii. Particulars of the value of the estate of the 'deceased';
- ix. Whether the 'deceased' died testate in which case the will should be exhibited; and
- x. Whether he died intestate, the names of the persons entitled on intestacy should be given.

Analysis

- 44. The Applicants and the Interested party believe that John Thorne is dead as they have not heard from or seen him since 2nd September, 2014. The evidence demonstrated that diligent searches were made to ascertain the whereabouts of John Thorne. Notably, a missing person's report was made to the police and thereafter, an investigation commenced. From 2014 to the present, there have been persistent enquiries to determine the progress of the investigation, and the TTPS has indicated that the matter is still under investigation.
- 45. It should be noted that the summons served personally by Marshal's Assistant and via email on the Officer in Charge of the Chaguanas Police Station was not answered. However, this Court is satisfied of the status of the investigations based on the letters dated 26th May 2020 and 8th February, 2021 annexed to the affidavit of Michael Thorne. Those letters indicated that relative to reports made by Michael Thorne, enquiries were conducted into the missing person, John Thorne of Strobos Avenue La Resource, D'Abadie who went missing on 2nd September 2014, but that no useful information was obtained.
- 46. Antoinette Joanne Thorne-Alexander deposed that prior to the disappearance, John Thorne, also being a citizen of the United States of America, would often travel to the United States of America for medical purposes and to conduct business. The United States of America Embassy was made aware of his disappearance, and the Embassy contacted the TTPS, who indicated that the matter was under investigation. Michael Thorne deposed that he visited the United States of America Embassy with his father's passports and identification documents. Representatives of the Embassy informed him that his father did not leave the country. This evidence is in line with information received from the representative of the Chief Immigration Officer.
- 47. The children of John Thorne's have in their possession his expired travel documents; therefore, it is unlikely that he could have left Trinidad and Tobago by legitimate means.
- 48. Moreover, if he were alive, it is likely that John Thorne would have made contact with persons with whom he is well acquainted, inclusive of his children, his close relatives as well as members of his church. Yet, from the evidence, they have not heard or seen him since September 2, 2014.
- 49. This Court is satisfied that the advertisement regarding the whereabouts of John Adral Thorne did not yield any information.

50. In light of the foregoing, this Court is satisfied by the evidence led by the Applicants and of Mr. Michael Thorne in this matter.

Order

1. Leave is granted to swear the death of John Adral Thorne otherwise John Thorne as having occurred on or since 2nd September 2014; and
2. There be no orders as to costs.

/s/ Raymond A. Roberts
Deputy Registrar Ag.