

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2010 – 02905

**IN THE MATTER OF
The Estate of Vernon Taylor, deceased
And the Wills and Probate Act, Chapter 9:03
AND IN THE MATTER OF
The Administration of Estates Act, Chapter 9:01
AND IN THE MATTER OF
The Partition Ordinance, Chapter 27 No. 14**

**BETWEEN
ATTALANTA ISAAC
(Administrator Ad Litem in the estate of Kathleen Ruth Villaruel, deceased)
IRIS FORTE
VERONA JOHNSON
(Legal Personal Representative in the estate of Valentina Johnson deceased)**

Claimants

**AND
LESLIE TAYLOR
(as Executor of the estate of Vernon Taylor, deceased)**

**SYLVIA BAXAM
WILMA LEE YOUNG**

Defendants

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Brian Busby for the Claimants

Mr Abdel Ashraph for the Defendants

Date: 20 February 2017

JUDGMENT

1. Vernon Taylor died on 3 November, 1972. He had a Will. He appointed his sons Ossie Taylor and Leslie Taylor, the first Defendant, as his executors. He left his Estate, which was substantial, to his ten children. Ossie Taylor himself died on 18 September, 1977. He left a Will. He gave everything he had to the first Defendant. The Estate of Vernon Taylor remains undistributed. Eight of the children have died. The Claimants contend that none of the beneficiaries have gotten anything from the Estate except for the first Defendant, the Executor. The other Defendants were named as parties, they being beneficiaries of the estate of Vernon Taylor, having not joined in the claim.
2. In this claim the Claimants asked for an account of the estate, that the Defendant complete administration of the estate, that the Defendant bear the expenses of the estate and that the court discharge the Defendant as executor.
3. Vernon Taylor's estate remained as it was until 1981 when the Defendant applied for and got probate. The Defendant got probate of Ossie Taylor's Estate in 1995.
4. By application on 15 May, 2015 an application was made for Trevor Taylor to replace the Defendant as executor. He is the son of one of the beneficiaries, Iris Forte.
5. It is to be noted that this claim progressed slowly. There were efforts to settle the matter given the size of the estate and what had to be done with it. When the claim

was filed, more of the beneficiaries were alive. They were all senior citizens and there was not always the level of co-operation required.

6. Further, the Defendant is himself of age – he is approximated eighty-five years now. He was cross-examined during this matter. I will come to my findings on this shortly.
7. Sections 28 and 29 of the **Wills and Probate Act, Chap. 9:03** give the Court power to discharge a representative of an estate from his office and grant representation to another party. The Court may also remove a representative by order for disobedience to a court order and appoint someone else to administer the estate.
8. In the **Goods of Loveday (1900) P. 154 Jenne P. at page 156** stated:

“After all, the real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto; and I could see no good reason why the Court should not take fresh action in regard to an estate where it is made clear that its previous grant has turned out abortive and inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and it turns out that the person so appointed will not or cannot administer, I do not see why the court should not revoke an inoperative grant and make a fresh grant.”

9. The issue in this case is whether the circumstances dictate that Leslie Taylor should be removed and that someone else be appointed in respect of the unadministered estate. Secondly, is Trevor Taylor such a person.
10. The evidence before the court is that there are a number of properties which are involved. The Claimants says there are fourteen properties. The Will mentioned seven. The Inventory listed ten properties. Some are large parcels of land. The properties are in different locations. There are tenants on some parts of the land. There may also be squatters. The estate, according to the Claimants, may be worth sixty million dollars.

11. Eight of the beneficiaries have died. Grants of representation have had or remain to be made in respect of those beneficiaries estates.
12. Certain allegations have been made by the applicant and refutation have been made by the Defendant to some of the matters and counter-allegations have been made. It is not necessary to resolve all of these conflicts, but some are more important than others. There are however some uncontroverted aspects of the evidence.
13. At the time of Vernon Taylor's death the Defendant was in his 40s. He is now in his mid- 80s. He took ten years to apply for probate. He said he was expecting his brother, who was older, to take steps. He also delayed some eighteen years to apply for probate of Ossie Taylor's estate.
14. It has been suggested that the Defendant left persons on the properties – and left the estate open now to claim of adverse possession. Thus he failed to secure the assets of the estate. I am unpersuaded by the Defendant's explanation on these matters.
15. The applicant has alleged that the rents from the property has been collected and used by the Defendant. There is no proper account or explanation by the Defendant in his affidavit or account for how much rent has been collected or what he has done with it.
16. The Defendant speaks of meetings held at the offices of an attorney in San Fernando with beneficiaries at which certain matters were agreed. The Defendant's account of this in his affidavit and in cross-examination is vague at best.
17. He said he has told the children of the beneficiaries on many occasions that they need to apply for administration of the estates of their parents so he can do deeds of assent to them.
18. However, there is no proper explanation why he did not pursue probate and administration in the 1970's and 1980's when most of the beneficiaries were alive.

19. The applicant's contention is that the Defendant has benefitted and used the estate for himself – these included living on one of the properties of the estate for all of the years and denying others the right to use it. Again there is no satisfactory response by him.
20. There is also no clear statement or record by the Defendant of what the estate comprises.
21. The Defendant says he has done what he can, given his limited financial position and the beneficiaries have not contributed to the costs. However, he had the option of selling one of the properties and using the funds to carry forward the responsibilities of administering the estate. As pointed out by Mr Busby, he could also have come to court to ask for directions on how to proceed.
22. The applicant has said there has been non-disclosure of how much rent has been collected over the years. Trevor Taylor has gone to tenants to find out how much has been paid and certain things haven't been told to him. I must regrettably agree that there has been no proper disclosure of how much rent has been collected from the estate.
23. The court had directed the Defendant during these proceedings to provide an affidavit of what the assets of the estate were and what was the management of these assets over the years. Again there has been no adequate response to this order saying, for example, what he did to manage and protect these assets – what was left vacant etc.
24. Iris Forte, gave an affidavit and oral evidence. She is one of the beneficiaries. She has said she got nothing from the Estate. She is likely 96 years old. I did not consider her lapses in giving oral evidence to be of any moment. I considered the value of her evidence was that the first Defendant has not done sufficient to advance the distribution of the estate and she has received nothing from it. I did not expect her to recall accurately details of meetings she had over time.

25. My own observations of the Defendant is that he is somewhat infirm. From my observations of him I am satisfied that he is unable at this time to continue with the onerous responsibilities of administering a complex estate such as this one – one that has become increasingly complex by his failure over the years to administer the estate in a proper manner.

26. In the case of the **Goods of Galbraith [1951] P. 422 at 424** Karminski, J stated:

“.....but in the present case there is the clearest possible evidence that both the surviving executors are men of very advanced age and suffering from such a degree of physical and mental infirmity as makes a continuance of their duties impossible.”

27. It is clear to me that the Defendant in this case is not in a position to look after the interests of the beneficiaries in this claim. In fact, I come to the unfortunate conclusion that over the years the Defendant has shown tremendous indifference to the interests of the beneficiaries and has himself kept the estate largely for his own benefit or for those he has selectively chosen to benefit.

28. This, is a clear case for which removal of the Defendant as the representative of the estate is property justified.

29. The next question is whether Trevor Taylor is an appropriate person to be appointed in his place. The Defendant says Trevor Taylor is not fit. He said Trevor Taylor unlawfully trespassed in 2000 on property belonging to the estate. He said Trevor went to tenants and told them to stop paying rent. Trevor has disputed this saying the Defendant gave him permission to build. In fact Trevor had to get the approval from the local authority to build, for which permission was necessary. There was also documentation showing Trevor Taylor had permission. I have considered the matters raised by the Defendant about Trevor and I do not consider these to be matters which have been shown to hold any merit.

30. This matter has been going on for a long time. Due to the Defendant's delay, the persons now to benefit have expanded. Most of the original beneficiaries have died.

Several attempts were made to have persons substituted. It appears that trust is a serious issue now having regard to the time that has passed.

31. It seems Trevor Taylor, who is Iris Forte's son, has the confidence of several of the persons now entitled. He was cross-examined. He was unable to answer some of the legal questions regarding the role of the executor. However, he has said he is willing to seek legal advice and be guided by the Attorney-at-Law, who is to advise on the administration.
32. In my view, he has shown himself to be a credible and competent person to carry forward the administration in all the circumstances. He has no adverse interest to the other parties.
33. It is high time this estate is finally distributed. I find him to be a fit and proper person in all the circumstances.
34. I order that Leslie Taylor be removed as executor of the Estate of Vernon Taylor, deceased in terms of paragraph one of the Notice of Application filed 15 May, 2015 seeking the removal of Leslie Taylor as Executor. I further order that Trevor Taylor be appointed in his stead.
35. Consequentially, the court will order that Leslie Taylor must file and verify accounts of the estate up to the date of the order, that is today, on or before 31 May, 2017. Leslie Taylor must also pay the costs of this application to be assessed by a Registrar in default of agreement.
36. Usefully this is all this Court can do in respect of this claim at this stage. I will grant liberty to apply for any consequential directions that may be necessary.

Ronnie Boodoosingh
Judge