THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2019-01778

IN THE MATTER OF

THE PROPERTY COMPRISED IN A DEED OF GIFT DATED 27TH SEPTEMBER, 1969, AND REGISTERED AS DEED NUMBER 8370 OF 1970 AND MADE BETWEEN

IZEMA VEDA YEATES

OF THE ONE PART

AND ELIZABETH DILLON, STANLEY DILLON AND LINCOLN DILLON

OF THE OTHER PART

BETWEEN

STANLEY DILLON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Justice Zainool Hosein (Retired) and Mr Ravi Nanga for the Claimant

Ms Nadine Nabbie instructed by Ms Avaria Niles for the Defendant

Date: 28 July 2020

JUDGMENT

1. The claim in this matter involves the undisposed portion of land that formed part of an approximately 3 acres of land (subject land) that was once owned by the claimant's Aunt, Mrs Izeda Veda Yeates (deceased). The subject land is located at Crown Point, Tobago. The claimant pleads that he is representing his sister, Ms Elizabeth Dillon, and brother, Mr Lincoln Dillon.

2. The case by the claimant is that by Deed of Gift, registered as Deed No. 8370 of 1970, the subject land was transferred to him and his siblings. The recital and operative portion of the Deed provided:

   "... whereas the donor is desirous of making provision for her nephews and niece (the Donees) and has agreed to execute these presents in manner herein after appearing."

   "... the donor as beneficial owner hereby conveys unto the donees all and singular the parcel of land described in the

> *schedule hereto to hold the same unto and to the use of the donees in fee simple as joint tenants."*

3. However, Mrs Yeates included a revocation clause. That revocation clause provided:

> *"... provided however that the donor may at anytime by Deed revoke the uses contained herein affecting the said parcel of land in whole or in part and made by the said Deed declare fresh uses in favour of herself or others with or without a like power of revocation. In witness whereof the said parties hereunto set their hands the day and year first hereinbefore written."*

4. Subsequently, by Deed of Revocation, registered as 1411 of 1972, she revoked the Gift.

5. On 19th October 1977, Mrs Yeates married Albert Tobias. On 2nd March 1986, she passed away. She left a Will but Mr Tobias failed to probate it. He died on 7th May 1999. The claimant pleaded that the Administrator General became entitled to act on behalf of the Estate of Mr Tobias. He evidences this by a letter written from the Administrator General on behalf of the Estate on 27th October, 2009, to the tenant in occupation of the subject land. There was an application (L2444 of 2004) by one Primus Polycarp Tobias claiming an interest in the Estate of Mr Tobias but no nexus was established and there are queries pending.

6. The claimant's case is that the original Deed of Gift which purported to transfer the subject land to him and his siblings is valid. However, the inclusion of the revocation clause is not valid and consequently, the Deed of Revocation. Additionally, any devise of land to Mr Tobias via Will could not have included the subject land which was devised to the claimant and his siblings. Therefore, he has brought the claim against the Attorney General and seeks the following reliefs:

   a. A declaration that the Deed of Gift registered as Deed No. 8370 of 1970 is and remains valid and effective and the revocation clause therein is null void and of no effect.

   b. A declaration that the purported exercise of revocation by Deed No. 1411 of 1972 is null and void and *malum in se*.

   c. An Order for delivery up of Deed No. 1411 of 1972 for cancellation thereof.

   d. A declaration that any Order made herein shall not affect title to the properties conveyed by Deed registered as No. 22172 of 1977, Deed registered as No. 261 of 1978 and Deed registered as No. 14298 of 1979.

7. The defendant, however, pleaded that the Attorney General is not the proper party before the court but rather it is the Administrator

General. This is further expanded upon in the submissions put forward by each side.

8. Substantively, the defendant argues that the revocation clause in the Deed of Gift is valid which implicitly puts the claimant and his siblings in the position of resulting trustees of the subject land. This being the case, the claimant was bound to rebut the presumption that they are trustees. Even if the presumption is rebutted, the claimant delayed to enforce his rights to the Gift. Additionally, subsequent to the Deed of Revocation the following transactions occurred:

    1) The title to two portions of the 3 acre 3 roods 4 perches parcel of land (the first comprising TWENTY THOUSAND, EIGHT HUNDRED AND TWENTY FIVE SQUARE FEET; the second comprising SEVEN THOUSAND, SIX HUNDRED AND THIRTY SQUARE FEET) is now vested by virtue of Deed registered as No. 22172 of 1977 in the Claimant and Lincoln Dillon as joint tenants.

    2) The title in a portion comprising SEVEN THOUSAND, TWO HUNDRED AND SEVENTY SQUARE FEET of the 3 acre 3 roods 4 perches parcel of land is now vested by virtue of a Deed of Conveyance registered as No. 9683 of 1987 in one Charles Elias.

3) The title in another portion of the same 3 acre 3 roods 4 perches parcel comprising FIVE THOUSAND AND SIXTY-FIVE SQUARE FEET is now vested by virtue of Deed of Mortgage registered as No. 6856 of 1997 in the Agricultural Development Bank.

9. There is also the concern that the claimant could not represent his siblings as no power of attorney was exhibited authorizing such representation.

Issues

I. Whether the revocation clause in the Deed of Gift is valid and what is the effect of such.

II. Whether other circumstances defeat the claim in Equity.

III. Whether the Attorney General is the proper party to the proceedings.

Issue I

10. The claimant submitted that the Deed of Gift effectively passed the subject land to the claimant and his siblings. Even though words of limitation were used pursuant to the Statute of Uses 1535, which

gave a lesser interest than a fee simple estate, it was no longer effective. ***Section 15(1)*** of the ***Conveyancing and Law of Property Chap. 56:01*** abolished the need for words of limitation after 1st September 1939. That sections provides:

> *15. (1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.*

Therefore, provisions in the Deed of Gift dealing with the conveyance of the subject land are valid.

11. However, the claimant submitted that the revocation clause is not valid and cited learning from ***Halsbury's Laws of England, 4th Edition, Volume 20, paragraph 52***, which states:

> *"Where there is an absolute gift of real or personal property and a condition is attached which is inconsistent with and repugnant to the gift, the condition is wholly void and the donee takes the gift free from the condition." It is to be noted that the alleged right of revocation amounts to a restraint or alienation in respect of an absolute gift.*

12. Further at ***paragraph 53*** is stated:

> *“...any restraint on alienation of an absolute interest in possession during a certain period is bad... "*

13. At ***Halsbury's Laws of England, 4th Edition, Volume 12, paragraph 1504***, the claimant cited the following:

> *"Hence, when one clause is in accordance with, and the other opposed to, the real intention, the former must be received and the latter rejected whatever their relative position."*

14. The claimant submitted that Mrs Yeates’ intention was to transfer the subject land to the claimant and his siblings and this was effected and perfected via the Deed of Gift. Therefore, the revocation clause is not in keeping with this intention. The claimant supported this proposition with learning from ***Halsbury's 4th Edition, Volume 20, paragraph 53***:

> *"The test is that an incident of the estate given, which the donor cannot directly take away or prevent, cannot be taken away indirectly by a condition which would cause the estate to revert to the donor, nor by a conditional limitation which would cause it to shift to another person.”*

15. A Donor, Mrs Yeates, could not have had a right to revoke a gift. Therefore, a revocation clause is in law, repugnant to a gift.

16. The defendant submitted that the Deed of Gift having the revocation clause is permissible in law. Additionally, since the Deed of Gift is a voluntary conveyance, it can be presumed that rather than passing a gift the effect was the creation of a resulting trust.

17. The defendant submitted the case of ***Re Ball's Settlement Trusts [1968] 1 WLR 899*** in support of the view that a power of revocation is not unheard of. It is common in Deeds of Powers of Attorney as well as Trust Deeds. ***Jagmohan Mykoo and Jasso Jagmohan v Indira Mungal and Ors CV2015-00784 (Mykoo v Mungal)*** is one case where a Deed of Gift was revoked by a Deed of Revocation. Therefore, a revocation clause is not outside the scope of a donor.

18. With respect to the issue of the creation of a resulting trust, the defendant submitted extensive learning from the case of ***Thomas Theophilus Bleasdell v Aknath Singh CV2007-02389 (Bleasdell v Singh)***. In that case, the claimant transferred a half share of his interest in a valuable piece of land to the defendant, a person who was a complete stranger up to about one year before. The claimant sought to set aside the Deed. The matter proceeded on one issue whether in the given circumstances the defendant held the property on a resulting trust for the claimant. In her judgment, Gobin J considered the extensive learning in the Canadian case of ***Neazor v***

Hoyle 1962 32 DLR (2d)131 which considered a wide array of authorities on the point.

19. Some of this learning from the case can be repeated here. In ***Maitland on Equity, 1932 ed., at page 79***:

> *We pass to the cases in which there is no expressed declaration of intention that A, the grantee, devisee, legatee shall be a trustee. Well, if by will I give to A and declare no intention of making him a trustee, then he is not a trustee; and if inter vivos and for valuable consideration I convey or assign to A so as to vest the legal estate or interest in him and declare no intention of making him a trustee, then a trustee he is not. But otherwise it is of voluntary conveyance or assignment inter vivos. For no valuable consideration I convey land unto and to the use of A and his heirs. Here the use does not result, for a use has been declared in A's favour, so A gets the legal estate – but in analogy to the law of resulting uses, the Court of Chancery has raised up a doctrine of resulting trusts. If without value by act inter vivos I pass the legal estate or legal rights to A and declare no trust, the general presumption is that I do not intend to benefit A and that A is to be a trustee for me. However this is only a presumption in the proper sense of that term and it may be rebutted by evidence of my intention. You see the difference between this case and the one lately put – if I convey to A 'upon trust' and declare no trust, A can not produce evidence that I did not*

mean to make him trustee – but if there is no talk of trust at all in the instrument which gives A his legal rights, then he may produce evidence to show that I really intended him to enjoy the property.

Such is the general rule – upon a voluntary conveyance inter vivos the presumption is that a trust results for the giver.

20. In ***Cheshire's Modern Law of Real Property, 6th ed., page 107***, the following appears:

If a feoffment was made before the Statute of Uses to a stranger in blood without the receipt of a money consideration (i.e., a voluntary conveyance), and without declaring a use in favour of the feoffee, the rule was that the land must be held by the feoffee to the use of the feoffor. The equitable interest that thus returned by implication to the feoffor was called a resulting use. The effect of the enactment by the Statute of Uses that a cestui que use should have the legal estate was, of course, that the legal estate resulted to the feoffer. In order to prevent this it became the practice in the case of such a conveyance to declare in the habendum of the deed that the land was granted 'unto and to the use of' the grantee. The repeal of the Statute of Uses by the legislation of 1925 would, in the absence of a further enactment, have restored the original rule, and it might have led practitioners to believe that the expression "to the use of' was still necessary in order to render a voluntary conveyance

effective. It is, however, enacted that 'in a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee'.

21. But jurists also recognized the complexity of the issue. In the case of ***M.D. Donald Ltd v Brown, [1933] S.C.R. 411 (S.C.C.), at page 414***, reversing an earlier decision, the court stated as follows:

> *Now, the question whether or not, today, a voluntary deed gives rise to a resulting trust in favour of the grantor, is a question about which there is a good deal of dispute. I refer to paragraph 108 in the 28th volume of Lord Halsbury's collection, upon the subject of Trusts and Trustees, which is in these words,*
>
> > *'It would seem that a voluntary conveyance of real property is deemed, in the absence of evidence to the contrary, to pass the beneficial interest in the property conveyed.'*

22. The defendant also submitted learning from ***Halsbury 5th ed (2014), paras 240, 253, and 257***:

> *If an intending donor of full age and capacity declares a trust for another, although for no consideration, it is binding generally on the creator of the trust and irrevocable by him*

***unless power of revocation is expressly reserved**, and the donee takes an equitable and enforceable interest whatever the nature of the property affected by the trust. It is immaterial whether or not the declaration of trust has been communicated to the donee. A trust may be created even though there is no expression in terms importing confidence, but the court must be satisfied that there was **a present and irrevocable intention** on the part of the alleged trustee to declare himself a trustee.*

*Prima facie the donor of a completed gift is not entitled to revoke it nor to recall any payment made voluntarily. Where an instrument is formally executed as a deed and delivered and there is nothing but the retention of the deed in the possession of the executing party **to qualify the delivery**, and nothing to show that he did not intend it to operate immediately, it is a valid and effectual deed, and delivery to the party who is to take under it or to any person for his use is not essential. Even though the contents have not been communicated to the beneficiaries, such a deed cannot be revoked **unless a power of revocation is reserved**. If a voluntary deed is complete, in good faith and valid, and is unaffected by any statutory disability, it is indistinguishable from one executed for valuable consideration, and it carries with it all the same incidents and rights attached to the property. With yet stronger reason, delivery to a third person for the use of the beneficiary in whose favour the deed is*

made, where the grantor parts with all control of the deed, makes the deed effectual from the instant of the delivery.

(Emphasis supplied)

23. Based on this learning, the defendant submitted that the effect of the revocation clause in the Deed of Gift created a resulting trust for which the claimant and his siblings had to rebut. They also submitted that the witness statement filed by the claimant does not show whether he enjoyed any beneficial interest or the circumstances that initiated the transfer. Since Mrs Yeates has passed on, all the Court has is what is on the face of the Deed. The Deed would have passed the full legal estate but for the revocation clause. But there having been included such a clause the donor was entitled to exercise it as she did in this case.

24. Furthermore, the defendant noted that the revocation clause was not a condition precedent as there was nothing to be done by the donor or donee. Therefore, even if the Gift was perfected, the power of revocation was not nullified.

25. In reply, the claimant submitted that the case ***Mykoo v Mungal (supra)*** is distinguishable from the instant case as this case concerns the inclusion of a revocation clause while ***Mykoo v Mungal (supra)*** did not. In ***Mykoo v Mungal (supra)***, an absolute gift did not pass as opposed to the instant case where an absolute gift was passed by the donor, Mrs Yeates. Having passed an absolute gift the donor cannot include a repugnant condition, the revocation clause.

26. The claimant also sought to distinguish the case of ***Bleasdell v Singh*** from the instant case with respect to the issue of resulting trust. On the facts, the title rests with the Estate until the Deed of Revocation is set aside. The issue of a revocation clause does not arise in ***Bleasdell v Singh***. The claimant submitted that ***Bleasdell v Singh*** assisted the instant case in allowing the court and the parties to understand the importance of the intention of the donor. Since in that case, the transfer was done to a complete stranger, there was no question for the court that the claimant in that matter did not intend to transfer his interest in the property to the defendant and there was no presumption of a gift. In the instant case, there is no contradictory evidence that Mrs Yeates intended to pass an absolute gift to her niece and nephews.

27. The claimant in reply cited authorities used in ***Bleasdell v Singh (supra)*** highlighting the earlier cited excerpt from ***Maitland on Equity (supra)***. The claimant included further, *"Both judges and textbook writers have differed upon this question and it is desirable to draw the student's attention to this diversity of opinion",* submitting that in the instant case no trust was declared but even if a presumption of a resulting trust arose, it can be rebutted by the clear intention of the donor.

28. The claimant cited other authorities from the judgment to support the view that a resulting trust cannot arise if there is a clear intention. Amongst the authorities were ***Lewin on Trusts 15th ed., at p. 131***, which states:

> *"…The effect of a voluntary conveyance of land or transfer of personality to a stranger is a question upon which the opinions of both judges and text books writers have differed… … But there is no dispute about this: all the circumstances are to be looked at, and if the conclusion is that, in view of all the circumstances no resulting trust was intended, then no resulting trust arises."*

29. The claimant submitted that Mrs Yeates, via the Deed of Gift, already explained why she was passing the subject land and therefore the defendant's submission that the claimant did not show how a beneficial interest or the circumstances of the transfer arose are irrelevant. However, the subsequent Deed also cast light on her intentions. The donors accepted the gift knowing of the revocation clause.

Conclusion

30. Given the authorities above, I agree with the defendant that the revocation clause was valid. Additionally, the Deed of Revocation also spoke to the donor's intention regarding the Gift. Given that the conveyance was voluntary, the effect of this is a resulting trust which the claimant had to rebut. Neither his pleadings nor his witness statement contain any particulars rebutting this presumption.

Issue II

31. The defendant made submissions on principles of Equity. Citing the authority of ***Hanbury and Martin on Modern Equity 20th ed. p 1-035***, they submitted that Equity helps the vigilant and not the indolent. Based on the case by the claimant, he is effectively asking the court to set aside the Deed of Revocation that was made in 1972 but he has done nothing since that time until filing in 2019 to assert his alleged rights to the subject land. He also did not bring an action during Mrs Yeates' lifetime.

32. Additionally, the claimant cannot ask the court to deal with the subject land differently from the other portions of land that were conveyed by Deed. Significantly, it appeared that claimant was dealing with the subject land as though the Deed of Revocation was valid.

33. The claimant and his siblings received excised portions of the subject land subsequent to the Deed of Revocation. However, he has failed to bring to court further documentation that would entitle him to the undisposed portion. He also has not brought any maps or survey plans to indicate which undisposed portions belong to him.

34. The Deed of Revocation is a registered document and would have formed part of a chain of title deducing good title. The three

transactions mentioned earlier would be affected if the Deed of Revocation were to be declared invalid.

35. With respect to transaction 1, this conveyance is contrary to submission of the claimant that the Deed of Revocation is invalid as the conveyance by virtue of Deed registered as No. 22172 of 1977 went to the claimant and Mr Lincoln Dillon as joint tenants.

36. With respect to transactions 2 and 3, the mortgagees in those transactions are entitled to rely on a Deed of Revocation as a good link in the chain of title.

37. With respect to transaction 3, the current owner is, in law, a bona fide purchaser for value without notice. Thus far, there has been no indication that the vendor, Mr Lincoln Dillon, provided any evidence of competing interests.

38. A final submissions made is that the claimant indicated in his statement of case that he is bringing the claim on behalf of his siblings. The defendant argues that there is no evidence of such an authorization to act on his sibling's behalf through a Power of Attorney.

39. In reply to the issue of other considerations, the claimant submitted that the issue of *laches* was not pleaded by the defendant and

therefore could not be raised now. The claimant also did not have to bring further evidence of his entitlement to the subject land as it is contained in the Deed of Gift. Contrary to the defendant's submissions that if the claimant is granted the relief it will affect the other transactions, the claimant submits that this is a simple case of claiming the undisposed portion of the 3 acre of land by treating the revocation clause as invalid thereby passing the title to the undisposed portion to the claimant. Additionally, parties in the three transactions would not be affected as the claimant is not making a claim against those transactions that have already happened. Finally, in his pleadings, the claimant already stated that he is the representing his siblings and the court ought to accept that evidence in this regard.

40. The defendant replied that the claimant did not provide a complete picture of the matter in his pleadings. He failed to raise the various transactions that took place since the Deed of Revocation, did not mention who were the donees, that the Deed of Gift was not signed by the donees, and that the Gift was revoked by the Deed of Revocation.

Conclusion

41. The submissions by the defendant and the evidence put forward by the claimant points to a lack of diligence by the claimant in asserting his rights. A substantial amount of time has elapsed with no explanation by the claimant. No reasons were given as to why an

action was not brought by him against his aunt if he felt that his and his sibling's rights to the subject land were denied. It also seems as though by the conveyance in 1977 there was an implied acceptance that the Deed of Revocation was valid. Much has happened with the land since the revocation. The claimant had to be aware of the revocation since the 1970's. There was implicit acceptance of the position because of him being directly impacted by subsequent transactions. There has also been no satisfactory explanation for the delay. Finally, there is no documentation indicating how the claimant was given authorization to represent his siblings. In those circumstances equity cannot assist the claimant.

Issue 3

42. With respect to the third issue, the claimant indicated that an application by the defendant to strike out as against the defendant was heard and determined on 24th June, 2019, whereby the Court dismissed the application.

43. The defendant raised the issue in their submissions along with the substantive matter. They submitted that ***section 4 (1) and (2)*** of the ***Administration of Estates Chap. 9:01***, provides:

> *4. (1) There shall be established the office of Administrator General.*

(2) The Administrator General shall be a corporation sole under that name, with perpetual succession

...

44. Further ***section 10 (1) to (4)***, provides:

10. (1) Where any real estate is vested for any term or estate beyond his life in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate (who and each of whom are included in the term "representative") as if it were a chattel real vesting in them or him. And if such estate is held upon any trust or by way of mortgage, it shall likewise legally devolve on the representative of any person deceased in whom it has been vested during his life.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and Letters of Administration shall be granted in respect of, and shall take effect to vest in the executor or administrator, all real estate and personal estate whatever, including chattels real. And there shall be no devolution of

estate by inheritance in any case save that the beneficial interest therein shall devolve as provided in Part III of this Act.

(4) On the death of any person all his estate real and personal whatever within Trinidad and Tobago shall vest in law in the Administrator General until the same is divested by the grant of Probate or Letters of Administration to some other person or persons: Provided that the Administrator General shall not, pending the grant of such Probate or Letters of Administration, take possession of or interfere in the administration of any estate save as in this Act and in the Wills and Probate Act provided.

45. Under ***section 30*** of the ***Wills and Probate Chap. 9:03***, it is provided that the order of preference for applying for a grant:

30. Applications for administration may be made by the following persons, as of course, and in the following order of preference:

(a) in cases of intestacy—

(i) the surviving husband or widow of the intestate;
(ii) the next of kin;
(iii) the Administrator General;

...

46. The defendant also submitted learning from two matters which emphasised the nature of the role of the Administrator General. In ***Arthur v Gomes (1966) 11 WIR 25*** at ***page 29***, the court stated that the Administrator General is, *"... merely a depository, so to speak, holding things in medio until such time as a grant is obtained. That is because the title at law cannot remain in vacuo pending the grant... "*

47. In ***Chandragupta Maharaj and Maiantee Maharaj v Nigel Joseph and Stella Gentle CV 2011-00647*** at ***paragraph 22***, the court gave its opinion regarding the section:

> *In my opinion section 10(4), does not allow the Administrator General to meddle with or take positive action in the estate. To my mind, that is the effect of the words "the Administrator General shall not, pending the grant of such Probate or Letters of Administration take possession of or interfere in the administration of the estate."*

48. The defendant submitted that the claimant is relying on a letter from the Administrator General dated 27th October, 2009, as evidence to prove that the Administrator General became entitled to act on behalf of the Estate of Mr Tobias. This being the case, then the Administrator General should be named a party.

49. Furthermore, the defendant submitted that even if the Administrator General is a named party, by virtue of ***section 10(4)***, of the ***Administration of Estates (supra)*** the Administrator General is only vested with the bare legal title until such time that a grant is taken up in the deceased's estate. For the Administrator General to be the Legal Personal Representative of an intestate it must make an application for Letters of Administration as per ***section 30*** of the ***Wills and Probate (supra)***.

50. Therefore, the defendant submitted that the reliance on one letter as evidence that the Administrator General can act on behalf of the estate is not founded in law. Additionally, the defendant submitted that the Attorney General is not the proper party to the proceedings.

51. In reply, the claimant reiterated that the application to strike out was heard and determined and it is an abuse to raise the submission again.

52. The claimant submitted that the Administrator General has control over the Estate until probate of the Will is granted as under ***section 4(1)(c)*** of the ***State Liability and Proceedings Act Chap 8:02***. This section provides that *"the State shall be subject to all those liabilities in tort to which … … it would be subject … … in respect of any breach of the duties attaching at common law to the … … control of property".* While the defendant submitted that the proper party is the Administrator General, the claimant replied that under ***section 4***

of the ***Administration of Estates Act (supra)***, reads that the Administrator General **may** be sued under that name. The defendant cannot argue that the Administrator General is not a servant of the State as per the ***State Liability and Proceedings Act (supra)***.

53. Regarding the defendant's emphasis of the limited powers of the Administrator General, the claimant submitted that the claim is not in respect to the administration of the estate but is a claim against the Estate. The Administrator General through the Attorney General is the proper party to the proceedings.

54. The defendant replied that the matter is materially flawed and the Attorney General is not a proper party to the proceedings. The Administrator General is not the Legal Personal Representative of the Estate and is acting under the provisions of ***section 10(4)*** of the ***Administration of Estates Act (supra)***. No grant has been given in either estate. The application by Primus Polycarp Tobias has queries pending and the defendant outlined the procedure the claimant can pursue to apply for a grant.

Conclusion

55. This matter was raised and argued. It seems to me that the Administrator General could have been made a party and ought to have. However, it cannot be said that the Attorney General is a wrong party in these circumstances acting on behalf of the

Administrator General. At this time the claim had to be brought against the State because of the pending application.

56. The result is the claim is to be dismissed. However, having regard to the novel issues raised in this claim, the difficulty of the subject issues and the uncertainty of the legal position, I am of the view that the appropriate order in this case is to order that each party will bear their own costs of the claim.

Ronnie Boodoosingh (E-signed)

Ronnie Boodoosingh

Judge