

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-01600

**IN THE MATTER OF THE ESTATE OF VIJAYA ROOPCHAND
POORAN OTHERWISE VIJAYA POORAN**

BETWEEN

SANJAY POORAN

Claimant

AND

LATCHMIN ROOPCHAND

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Ms. Hyacinth Griffith instructed by Ms. Marielle Cooper-Leach

Defendant: Mr. Shaheed Hosein

Date of Delivery: 23rd October 2020

REASONS

- [1] On the 24th April 2018, I gave judgment for the Claimant against the Defendant and Ordered, *inter alia*, that ‘the Defendant Roma Pooran pay the costs of this action to be assessed in default of agreement.’
- [2] By Notice of Application filed on the 4th May 2018, the substituted Defendant sought an Order that the Court amend its judgment dated 24th April 2018 under the Slip Rule or make it clear that the Order for Costs made thereunder are payable by the estate of the Original Defendant Latchmin Roopchand and not personally against the Substituted Defendant Roma Pooran. The grounds relied upon in support of the application were that:
- (i) the Order for costs was made in an Estate Action to preserve the estate of the deceased; the costs should therefore be paid from the estate being preserved.
 - (ii) the Order was made in error since Roma Pooran was the substituted Defendant, the original action having been commenced against Latchmin Pooran deceased.
- [3] The Claimant objected to the Defendant’s application and argued that while the issue relating to an award of costs is discretionary, on the facts of this case, the Order made by this Court should stand for the following reasons:
- (a) the substituted Defendant at all times acted on her own behalf and in her own interest.
 - (b) the substituted Defendant lacked bona fides
 - (c) the findings of fact by this Court with respect to the conduct of the the substituted Defendant in the trial of the Claim, were such that the Court ought to penalize her in costs¹.

¹Claimant’s submissions filed on 21st July 2020

THE LAW

- [4] In determining this Application, I had regard to the learning in the text **Tristan and Cooke's Probate Practice** ² in which the learned authors opined that where a party successfully opposes probate, as is the case here, he may 'recoup himself out of the estate for his costs.'
- [5] Upon consideration of the applications, the submissions, the pleadings and evidence in the Original Claim, and in the exercise of my discretion, I decided to vary the Original Order for costs made on the 24th April 2018 and ordered that Costs awarded in the Judgment dated 24th April, 2018 be paid out of the estate of Latchmin Roopchand. In determining this Application, I took into account the following facts:
- (a) the original Claim was instituted by the Claimant against Latchmin Roopchand on the 19th April 2012; she filed a Defence and Counterclaim on the 19th November 2012. Latchmin later died on the 18th August 2016 and was substituted by Roma Pooran.
 - (b) Roma Pooran did not give a Witness Statement in the Claim but relied on her affidavit filed in the probate application and was cross-examined.
- [6] I agreed with the Defendant's submission that the Claim had been instituted by Latchmin to preserve the Estate of Vijaya Pooran; the Claimant having been successful in opposing Latchmin's application for Letters of Administration with the will amend of Vijaya's estate, was entitled to costs from that estate and not from the substituted Defendant and I so ordered.

Joan Charles

Judge

²21st Edition at paragraphs 745 to 746