

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-02448

**IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CHAPTER 9:01
SECTION 15**

AND

**IN THE MATTER OF THE PARTITION ORDINANCE CHAPTER 27 NUMBER 14
SECTION 4**

BETWEEN

**DOREEN CHURAMAN
(Legal Personal Representative of JOSEPHINE PACHECO also called JOSEPHINE
EVELYN PACHECO , Deceased)**

First Named Claimant

**DOREEN CHURAMAN
(In her Personal Capacity and in her own right)**

Second Named Claimant

**RUSELL JUANITA CARACCIOLO also called RUSELL CARACCIOLO
also called RUSELL CARRACIOLLO
(by her duly constituted Attorney KATHLEEN RITA CUMBERMACK also called
KATHLEEN R. CUMBERMACK also called KATHLEEN CUMBERMACK by virtue of
Power of Attorney registered as No. DE201601966041)**

Third Named Claimant

**ELIZABETH MARY LABAN
also called ELIZABETH LABAN**

Fourth Named Claimant

**KATHLEEN RITA CUMBERMACK also called
KATHLEEN R. CUMBERMACK also called KATHLEEN CUMBERMACK**

Fifth Named Claimant

JENNIFER PAPONETTE

Sixth Named Claimant

GEOFF LABAN

Seventh Named Claimant

JASON LABAN

Eighth Named Claimant

AND

ALICIA DE RAMOS-GEORGE

Defendant

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 17th April, 2018

APPEARANCES:

Ms. Debra James Attorney at law for the Claimants.

Ms. Sallian N. Holdip Attorney at law for the Defendant.

REASONS

1. On the 5th December 2017 (“the Order”) I extended time and ordered that the Defence filed on the 6th day of November, 2017, to stand as the Defendant's Defence in this action. I also made the following order:

- “1. The Defendant to obtain an updated valuation, of the Valuation Report dated the 19th day of May, 2011 on or before the 17th day of January, 2018.*
- 2. In default, the Defendant to be bound by the Valuation Report dated the 19th day of May, 2011.*
- 3. The Claimants do pay to the Defendant her share on or before the 31st day of January, 2018.*
- 4. The sum of Eight Thousand, Three Hundred and Fifty-Three Dollars and Twelve Cents (\$8,353.12) to be deducted from the sum to be paid to the Defendant as her share and interest.*
- 5. The Defendant do vacate the premises as described as ALL AND SINGULAR that parcel of land situate in the Town of Arima in the Island of Trinidad comprising ONE HALF LOT being the Eastern portion of No.18, Church Street in the said Town of Arima and bounded on the North by lands of Innocent Laban, on the South by Church Street, on the East by Prince Street and on the*

West by lands of Recalda De Ramos or howsoever the same may be bounded or known and which said piece or parcel of land is more particularly described in the Schedule to Deed registered as No. 4196 of 1956 and on a recent survey was found to be comprising THREE HUNDRED AND THIRTY-FIVE POINT FIVE (335.5) SQUARE METRES and bounded on the North by lands of Innocent Laban now Judea Laban, on the South by Church Street, on the East by Prince Street and on the West by Lot No. 18 and which said piece of parcel of land is assessed in the Rolls of the Arima Borough Corporation, Assessment No. BIA9/18A as No. 18A, Church Street, Arima TOGETHER with the building standing thereon and the appurtenances thereto belonging (hereinafter referred to as "the said Property") on or before the 28th day of February, 2018.

6. *Upon payment by the Claimants to the Defendant of her share, the Defendant to execute the Deed of Conveyance.*
7. *In default, after the 28th day of February, 2018 the Registrar of the Supreme Court do execute the Deed of Conveyance on behalf of the Defendant in favour of the Claimants.*
8. *The parties are to have discussions on costs, in default of agreement, there shall be liberty to apply on the issue of costs."*

2. The Defendant having appealed the Order I now set out my reasons for making it.

3. By Fixed Date Claim filed on the 4th July 2017 the Claimants sought the following orders:

*"1. An Order for Sale in lieu of partition of **ALL AND SINGULAR THAT PARCEL OF LAND SITUATE IN THE** Town of Arima in the Island of Trinidad comprising **ONE HALF LOT** being the Eastern portion of No. 18, Church Street in the said Town of Arima and bounded on the North by lands of Innocent Laban on the South by Church Street in the said Town of Arima and bounded on the North by lands of Innocent Laban on the South by Church Street on the East by Prince Street and on the West by lands of Reclada De Ramos or howsoever the same may be bounded or known and which said piece or parcel of land is more particularly described in the Schedule to Deed registered as No. 4196 of 1956 and on a recent survey was found to be comprising **THREE***

HUNDRED AND THIRTY FIVE POINT FIVE (335.5) SQUARE METRES
and bounded on the North by lands of Innocent Laban now Judea Laban on the South by Church Street on the East by Prince Street and on the West by Lot No. 18 and which said piece or parcel of land is assessed in the Rolls of the Arima Borough Corporation, Assessment No. B1A(/18A as No. 18A, Church Street, Arima TOGETHER with the building standing thereon and the appurtenances thereto belonging (hereinafter referred to as “the said Property”) and that the proceeds of the said sale be divided in the same proportion as their shares and/or interest after payment therefrom of the expenses of sale and the costs of this application.

2. *An Order that the said Property be sold for not less than the valuation Price of Six Hundred and Thirty-Five Thousand Dollars (\$635,000.00).*
3. *That the Fourth, Seventh and Eighth Claimants be grant leave to purchase the said property.*
4. *In pursuance of such Order of Partition and in accordance with Section 7 of the Partition Ordinance Chapter 27 Number 14, that the Registrar of the Supreme Court do execute the Deed of Conveyance in default of the parties named herein.*
5. *An Order pursuant to Section 15 of the Administration of Estates Act Chapter (9:01 seeking directions of the Court for the sale of the Defendant’s interest in the said Property by the First Claimant.*
6. *An Order that the Defendant do vacate the said Property within fourteen (14) days of the date of the Order.*
7. *An Order that the sum of Eight Thousand Three Hundred and Fifty Three Dollars and Twelve Cents (8,353.12) be deducted from the Defendant’s share of the proceeds of the Sale of the said Property which represents the costs incurred in the administration of the Estate of Josephine Pacheco also called Josephine Evelyn Pacheco, Deceased to be paid by the Defendant.*
8. *An Order that the costs of this Application be paid by the Defendant.*
9. *Such further and/or other reliefs as the Honourable Court may deem fit.”*

10. In support of the Fixed Date Claim was an affidavit sworn to and filed by the Claimants (“the Claimants Affidavit”). The Claimants Affidavit deposed that the Claimants are together seized and possessed of three undivided quarter share, title and interest in the said Property and the Defendant is entitled to the remaining one undivided quarter share, title and interest.
11. The Claimants deposed that by Deed dated 2nd September 2009 and registered as No. DE200902715460 Josephine Pacheco also called Josephine Evelyn Pacheco (“the Deceased”) became seized and possessed of one undivided half share, title and interest in the said Property and Stanley Pacheco, the Second, Third , Fourth, Fifth and Sixth Claimants became owners of the other one undivided half share, title and interest in the said Property in fee simple as tenants-in-common.
12. By the last Will of the Deceased dated the 28th day of August 2008 ("the said Will") the Deceased devised and bequeathed all her one undivided half share, title and/or interest in the said Property to the Second, Third , Fourth, Fifth and Sixth Claimants and the remaining one undivided quarter share, title and/or interest to the Defendant in fee simple as tenants-in-common. The Deceased died on the 21st April 2010.
13. On the 13th day of May 2011 the First Claimant as the executrix and legal personal representative of the estate of the Deceased caused a valuation of the said Property to be undertaken by G.A. Farrell & Associates Limited for the purpose of settling the said Property. The said Property was valued at \$635,000.00 and copy of the said Valuation Report dated the 19th day of May 2011 (“the Valuation”) was annexed to the Claimants Affidavit as "**D.C.6**".
14. By Deed of Conveyance dated the 1st day of July 2011 and registered as No. DE201101920006 Stanley Pacheco transferred his one undivided twelfth share title and/or interest in the said Property to the Fourth, Seventh and Eighth Claimants in fee simple as tenants-in-common. A copy of the said Deed of Conveyance was annexed to the Claimants Affidavit as "**D.C.4**".
15. The said Will was duly proved in the High Court of Justice of Trinidad and Tobago by the First Claimant on the 23rd day of December 2011 and a Grant of Probate was issued. A copy

of the Grant of Probate was annexed to the Claimants Affidavit as "**D.C.1**".

16. By Deed of Assent dated the 27th day of May 2014 and registered as No. DE201401428234 ("the Deed of Assent") the First Claimant in her capacity as executrix of the estate of the Deceased assented unto the Second, Third, Fourth, Fifth, and Sixth Claimants respectively one undivided quarter share, title and/or interest in the said Property in fee simple as tenants-in-common. A copy of the Deed of Assent was annexed to the Claimants Affidavit as "**D.C.12**".
17. Despite several verbal communications by the First Claimant to the Defendant for the payment of the sum of \$8,353.12 being her contribution towards the expenses incurred in obtaining the Grant of Probate of the estate of the Deceased, the Valuation Report and the preparation of the Deed of Assent, the Defendant failed, refused and/or neglected to liquidate the said sum.
18. By registered letter dated the 1st day of October 2012 the First Claimant through her Attorney-at-Law, Ms. Debra W.C. James, wrote to the Defendant informing her of the desire to assent to her the one undivided quarter share, title and/or interest in the said Property in accordance with the terms of the Will upon payment of her contribution of the cost incurred in the administration of the estate of the Deceased in the sum of \$8,353.12. The said letter was sent by registered post and a copy was annexed to the Claimants affidavit as "**D.C.7**". The Defendant received the said letter on the 19th October 2012.
19. By registered letter dated the 5th day of June 2014 the First, Second, Fourth and Fifth Defendants through their Attorney-at-Law, Ms. Debra W.C. James, Attorney-at-Law wrote to the Defendant offering to purchase her one undivided quarter share, title, estate and/or interest in the said Property for the sum of \$158,750.00 being the value of the Defendant's one undivided quarter share, title and/or interest in the said Property subject to the deduction of the outstanding sum of \$8,353.12. They also indicated that the Defendant would be permitted to live in the portion of the dwelling house which she occupied on the said Property rent free for 1 year from the date of sale. Despite several attempts to deliver the said letter it was returned unclaimed. A true copy of the said letter was annexed to the Claimants Affidavit

as "**D.C.8**".

20. By letter dated the 14th day of October 2014 the Second, Fourth and Fifth Claimants through their Attorney-at-Law, Ms. Debra W.C. James, again wrote to the Defendant offering to purchase her one undivided quarter share, title, estate and/or interest in the said Property for the purchase price of the sum of \$158,750.00 being the value of the Defendant's one undivided quarter share, title and/or interest in the said Property subject to the deduction of the outstanding sum \$8,353.12. They also indicated that the Defendant would be permitted to live in the portion of the dwelling house on the said Property which she occupied rent free for 1 year from the date of sale. The said letter was hand delivered personally to the Defendant and a copy was annexed to the Claimants Affidavit as "**D.C.9**".
21. By letter dated the 3rd day of November 2014 the Defendant through her Attorney-at-Law, Ms. Toni Pierre in response to the letter dated the 14th October 2014 requested a copy of the Valuation Report and the invoice for the administration of the estate of the Deceased. She also expressed the Defendant's desire to vacate the said Property once a settlement figure could be agreed upon. A copy of the said letter was annexed to the Claimants Affidavit as "**D.C.10**".
22. By letter dated the 4th February 2015 the Second, Fourth and Fifth Claimants respectively through their Attorney-at-Law, Ms. Debra W.C. James forwarded the copy of the Valuation Report and a copy of the letter dated 1st October 2012 itemizing the Defendant's contribution towards the cost incurred in the administration of the estate of the Deceased. A copy of the said letter was annexed to the Claimants Affidavit as "**D.C.11**".
23. Neither the Second, Fourth and Fifth Claimants nor their Attorney-at-Law, Ms. Debra W.C. James received any further communication from the Defendant.
24. The Defendant filed a Defence on the 6th November 2017. In the Defence the Defendant admitted that a meeting with the First Claimant and others subsequent to the death of the Deceased she was given a copy of the said Will. However, the Defendant denied being part of any discussion with respect to the undertaking of a valuation of the said Property; that prior to the instant action she saw the Grant of Probate of the Deceased's estate; and that her

contribution for the expenses incurred for the administration of the Deceased's estate was \$8353.12. The Defendant stated that she considered that the amount for the said Property in the Valuation Report was below the market value and that she was desirous of a valuation to be done by a valuator to be agreed upon by the Claimants and herself. She admitted that she did not respond to the correspondence which were sent to her on behalf of the Claimants. Lastly, the Defendant stated that she was willingness to vacate the said Property once furnished with a settlement figure that accurately represented her interest and she requested another valuation of the said Property by a valuator to be agreed upon by the Claimants and herself.

25. At the hearing the disagreement between the parties was on if there was to be another valuation, which party was to bear the costs of it. In light of the case presented by each side I made the Order for the following reasons.
26. Firstly, the Court was empowered under section 15 of the **Administration of Estates Act**¹ and section 4 of the **Partition Ordinance**² to order a sale of the Defendant's share in the said Property in lieu of partition. The Defendant was willing to sell her share in the said Property to the Claimants who were interested in purchasing it but she had a difficulty with the value which her share was to be sold. The Claimants had incurred the costs to have the Valuation Report done and the Defendant was objecting to it and she wanted a new valuation. However, there was no evidential basis provided by the Defendant to challenge the value for the said Property as set out in the Valuation Report. In my opinion, it would have been unnecessarily burdensome to order the Claimants to share the costs of a new valuation when they had already paid the costs for the Valuation Report. Therefore, I ordered that the Defendant had to bear the costs for any new valuation since she wanted it. Further, by making the order for G.A Farrell and Associates, the same firm which had done the Valuation Report to update it, I was of the opinion the Defendant would have saved on costs since the process was not being started over.
27. Secondly, I gave the Defendant 6 weeks to obtain the updated valuation since I was of the opinion that the Claimants had been trying to resolve the matter amicably with the

¹ Chapter 9:01

² Chapter 27 No. 14

Defendant since October 2012. They only filed the instant action in July 2017 due to the delay in having the issue resolved was on the part of the Defendant. I took into account that despite the several correspondence from the Claimants to the Defendant during the period October 2012 to February 2015 the Defendant refused to take any positive steps to resolve the matter. Indeed the Defendant admitted that she had received all the correspondence sent on behalf of the Claimants. In any event, there was no explanation from the Defendant why it took her from 2014 to 2017 to arrive at her position since she was aware since June 2014 that the Claimants had offered to purchase her share in the said Property for \$158,750.00. I included a provision for the Defendant to be bound by the Valuation Report dated 19th May 2011 in the event there was no updated valuation by the 17th January 2018 since I was of the view that the Defendant had delayed previously and if there was no updated report, the Valuation Report was valid and could be used. I gave the Claimants two weeks after the deadline for the updated report to purchase the Defendant's share in the said Property since from their evidence they were willing to purchase it. I made the order for the Defendant to vacate the said Property on or before the 28th February 2018 since I was of the opinion that even if she had not executed the Deed of Conveyance by that day the Registrar of the Supreme Court was ordered to do so.

28. Lastly, the Defendant wanted the benefit of being paid for her share of the said Property which was given to her by the Deceased in the Will but she did not want to share in any of the testamentary and administration expenses incurred in the processing of the very estate from which she derived a benefit. I made the order for the sum of \$8,353.12 to be deducted from the sum to be paid to the Defendant as her share and interest in the said Property since the Claimants had provided the Defendant the said information in the document exhibited as "D.C 11" of the Claimants Affidavit and this was the testamentary and administration expenses with respect to her share of the Deceased's estate and the executrix was entitled to deduct the said expenses from the Deceased's estate.

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Margaret Y Mohammed
Judge