

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2015–01702**

**IN THE MATTER OF THE ESTATE OF MEGAN ROBERTS ALSO CALLED  
EMMANUEL MEGAN ROBERTS OF NO. 37 SAPPHIRE CRESCENT  
DIAMOND VALE, DIEGO MARTIN, DECEASED**

**BETWEEN**

**ESTEL ROBERTS**

**Attorney for JENINE TITUS (Nee Roberts) and RONALD ROBERTS  
Executors Named in the Last Will and Testament of the above named Deceased**  
Claimant

**AND**

**DWAYNE ROBERTS**

First Defendant

**JOELENE MARCELIN-ROBERTS**

Second Defendant

**Before The Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Ms. Tamara J Sylvester instructed by Mr. Shane P. Kingston for the Claimant

Mr. Nigel J Allsop for the Defendants

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**DECISION ON APPLICATION**

**TO BE APPOINTED ADMINISTRATRIX AD LITEM AND AD COLLIGENDA  
BONA**

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## **I. Introduction**

[1] This decision is in respect of an application filed by the Claimant on 4 February 2016 to:

- a. be appointed by this Court as Administratrix ad Litem in the estate of Megan Roberts also called Emmanuel Megan Roberts (hereinafter called “the deceased”);
- b. be granted a grant Ad Colligenda Bona limited for the purpose of maintaining the substantive claim in this matter which concerns the preservation, receipt and collection of the deceased estate;
- c. in her capacity as Administratrix Ad Litem and Ad Colligenda Bona of the estate of the deceased, be substituted for the Claimant in her capacity as the lawful Attorney for Jenine Titus (nee Roberts) and Ronald Roberts, the executors named in the last Will and testament of the deceased, pursuant to rule **19.2(5) of the Civil Proceedings Rules 1998 (as amended)**; and
- d. Amend the Fixed Date Claim Form, Statement of Case and Defence, to substitute the Claimant in her capacity as Administratrix Ad Litem and Ad Colligenda Bona for the Claimant in her capacity as lawful Attorney.

[2] The Claimant is the lawful Attorney of the Jenine Titus and Ronald Roberts, the executors and trustees of the deceased’s estate. The Claimant became lawful Attorney of the executors/trustees by virtue of Deeds of Power of Attorney dated 22 April 2011 and 24 December 2014 and registered as DE20110123161 and DE201500143177, respectively.

[3] The First Defendant alleges that he is one of the sons of the deceased and the Second Defendant is the First Defendant’s wife.

[4] The substantive claim in this matter, in essence, concerns property situate at No. 37 Sapphire Crescent, Diamond Vale, Diego Martin, Trinidad (hereinafter referred to as the “subject property”). That subject property was owned by the deceased who died testate. The subject property remains to be distributed to the deceased’s beneficiaries in

accordance with his last Will. However, no grant of probate has to date been obtained in respect of the deceased's estate.

[5] That notwithstanding, the substantive claim in this matter was made by the Claimant in her capacity as lawful Attorney of the executors/trustees of the deceased's estate, against the Defendants for trespass to, and the preservation of, the subject property. In defence to the claim, the Defendants have, inter alia, put into issue the Claimant's capacity to sustain the substantive action on the basis that the Claimant has not received the Grant of Probate or Letters of Administration with Will Annexed, as required to administer the estate of the deceased.

[6] Following the filing of the Defendant's Defence, the instant application was made by the Claimant.

[7] Pursuant to the directions of this Court, on 21 June 2016 the Defendant filed written submissions with authorities in respect of the Claimant's instant application. On 20 July 2016 the Claimant filed written submissions with authorities in response.

[8] Thereafter, on 27 October 2016, this Honourable Court asked Counsel for the Claimant and Defendant to make submissions on the effect (if any) of the letters dated 20 December 2009 and 22 January 2013 wherein the executors Ronald Roberts and Jenine K. Titus, respectively, purported to relinquish all rights and responsibilities as executors and trustees of the Will of the deceased *to* the Claimant.

[9] Accordingly, on 25 November 2016, Counsel for the Claimant and the Defendant filed their respective submissions on that further issue in question. Additionally, on 30 November 2016, the Claimant filed a Notice of Application for leave to reply to the Defendant's submissions with the Affidavit of Tamara Sylvester attached as well as the Claimant's said Reply to the Defendant's submissions. The Defendant made no objection to the granting of leave to the Claimant to reply, and thus in addition to all the submissions filed, the Court has also taken into consideration the Claimant's Reply to the Defendant's submissions.

[10] This Court has considered all the written submissions and authorities presented to the Court by both parties. Having regard to the law and the facts at hand, this Court finds that the letters dated 20 December 2009 and 22 January 2013 written by the executors of the deceased namely Ronald Roberts and Jenine Titus, respectively, do not amount to a valid renunciation of the said executors' duties as executor as neither of the letters is compliant with the formalities required by **rule 36 of the Non-contentious Business Rules, First Schedule, Wills and Probate Act Chap. 9:03**, nor was either of the two letters ever filed at Probate Registry, High Court of Justice.

[11] This Court has also found that the Claimant, as lawful Attorney of the executors appointed by the deceased, had the requisite locus standi to initiate the substantive claim in this matter and thus the substantive claim as filed is valid.

[12] Further, in light of the fact that both of the appointed executors reside outside this jurisdiction and both have consented to the Claimant's conduct of the instant matter by virtue of their respective Deeds of Power of Attorney, I am of the view that the circumstances are appropriate for this Court to order a limited grant of administration to the Claimant. Bearing in mind that the Claimant had locus standi to initiate the substantive claim in this matter, the doctrine of relation back will apply thus sustaining the Claimant's substantive claim and this Court's instant order of a limited grant of administration to the Claimant, shall enable the Claimant to obtain a decree of the Court in respect of same.

[13] I have hereinafter detailed the reasons for my decision.

## **II. Facts Relevant to the Instant Application**

[14] During his lifetime, the deceased was the leasehold owner of the land situate at No. 37 Sapphire Crescent, Diamond Vale, Trinidad also known as Lot. No. 58 of the Diamond Vale Housing Project (hereinafter called "the subject property"). The ownership of the subject property by the deceased is evidenced by Deed of Lease dated 15 October 1997 and registered as No. 21875 of 1999, whereby the deceased's leasehold

interest in the land was renewed for “a further term of THIRTY YEARS from the 1<sup>st</sup> day of June 1994.”

[15] The Deceased died testate on 13 April 2009. In his last Will dated 9 May 2003 the Deceased appointed Ronald Roberts and Jenine Titus to be the executors and trustees of his Will. In respect of his property, the Deceased’s Will was as follows:

*“I bequeath to GILLIAN MODESTE my housekeeper the sum of \$15,000.00 to be paid by my Executors out of my estate.*

*I declare that I own leasehold premises situate at 37 Sapphire Crescent Diamond Vale Diego Martin in the Ward of Diego Martin in the island of Trinidad. I hereby direct that these premises be vested in my Trustees to hold the same in trust for all my grandchildren equally until the last of my said grandchildren attains the age of 18 years whereupon my Trustees shall assign the said premises to my said grandchildren or as my said grandchildren may direct.*

*All other property real or personal that I may own or become entitled to at my death or that I may die possessed of I hereby devise and bequeath to my four children namely my sons GERALD ROBERTS, RONALD ROBERTS, and MYRON ROBERTS and my daughter JENINE TITUS in equal shares.”*

[16] No grant of probate was obtained by the executors/trustees of the deceased’s estate. Rather, by letter dated 20 December 2009 the first executor Ronald Roberts wrote and signed the following:

*“I Ronald Roberts, being of sound mind relinquish all rights, responsibilities, and duties entrusted to me as one of the executor and trustee [sic] of Emmanuel Megan Roberts (my father) last will and testament dated 19<sup>th</sup> May, 2003. [sic] To Estel Roberts (my mother) this includes all money and property located at 37 Sapphire Crescent, Diamond Vale, Diego Martin, Trinidad West Indies. Effective date 25<sup>th</sup> 22d [sic] December 2009.”*

[17] Additionally, by letter dated 22 January 2013, the second executor, Jenine K. Titus, wrote and signed the following:

*“To whom it may concern:*

*My name is Jenine Karen Roberts Titus. I am the legitimate daughter of Emmanuel Megan Roberts, better known as Megan Roberts,*

*who was deceased on 13 April 2009 at Jackson memorial hospital in Miami Florida USA.*

*In my father's will I was designated to be one of the Executrixes. I hereby now relinquish my rights and duty as executrix and give it to my mother Estel Jovita Roberts who now lives at the home at 37 Sapphire Crescent Diamond Vale Diego Martin Trinidad.*

*I also give as a deed of gift everything that was left to me and my children (his grandchildren) to my mother Estel J. Roberts from my father Emmanuel Megan Roberts also called Megan Roberts."*

[18] Thereafter both executors, who reside in the United States of America, by virtue of Deeds of Power of Attorney dated 22 April 2011 and 24 December 2014 and registered as DE201101023161 and DE201500143177, respectively, each appointed the Claimant as his/her lawful Attorney.

[19] Both Deeds of Power of Attorney gave the Claimant the power to:

- a. obtain a grant of letters of administration with the said Will annexed to the deceased's estate;
- b. commence, carry on or defend all actions and other proceedings touching the subject property or in connection with the estate of the deceased; and
- c. generally act in relation to the subject property and all other matters in which the executors/trustees may be interested or concerned ***as fully and effectually in all respects as the executors/trustees could do.***

[20] Importantly, when the first executor, Jenine Titus, appointed the Claimant as her lawful Attorney, she specified in the Deed of Power of Attorney that such appointment was being made in the name of Jenine Titus *"to do and execute all or any of the following acts and deeds and in particular to make an application on my [Jenine Titus'] behalf for a Grant of Letters of Administration with Will annexed."* The effect of this, in the absence of express words to the contrary, was that Jenine Titus was maintaining her status as one of the executors/trustees of the deceased's estate, though granting the Claimant such power to act on her behalf and fulfil her (Jenine Titus') duties as executor.

[21] This was unlike the Deed of Power of Attorney made by the second executor, Ronald Roberts, in favour of the Claimant, whereby he *appears* to be renouncing his status as executor/trustee of the Deceased's estate, by virtue of the statement in his Power of Attorney document that he (Ronald Roberts) "*relinquish[es] all rights, responsibilities and duties entrusted to [him] as one of the executor[s] and trustee[s] of the deceased's said Last Will.*"

[22] That notwithstanding, the Claimant in her capacity as the lawful Attorney of the appointed executors, made an application for a Grant of Administration with Will Annexed at the Probate Registry, on 10 April 2015. The Claimant, however, deposed that that application for the grant was subject to a number of queries and that she was yet to retain an Attorney-at-law to deal with same. She thus deposed that she verily believed that she would not be able to obtain a grant within the immediate future.

[23] Subsequent to making the application for the grant, the Claimant filed an Amended Fixed Date Claim against the Defendant on the 11 December 2015 (hereinafter called "the substantive claim"). The relief sought by the Claimant in that substantive claim are:

- a. An order that the Defendants do immediately vacate the subject property;
- b. An injunction restraining the Defendants, their servants and/or agents from entering or remaining on the subject property and from removing and/or damaging the subject property and its contents;
- c. Damages for Trespass to and/or use and occupation of the subject property;
- d. Special damages in the sum of \$28,216.16;
- e. Damages in restitution for unjust enrichment; and
- f. Interests and costs.

[24] In essence the Claimant avers that the Defendants are in unlawful occupation of the premises and are preventing the Claimant from carrying out her duty to preserve and maintain the premises. To this end, the Claimant further avers that the subject property is at risk of imminent spoliation and dissipation, hence the necessity of the substantive claim made against the Defendants.

[25] However, following the commencement of the substantive claim, both the Claimant and the Defendants joined in issue as to whether the Claimant could sustain the substantive claim in her capacity as the lawful Attorney of the executors/trustees of the deceased's Will, in circumstances where the deceased's Will had not yet been proved and the Grant of Letters of Administration with Will Annexed had not yet been obtained.

[26] According to the Claimant, while in her capacity as lawful Attorney for the executors/trustees she had the capacity to institute an action in the character of the Deceased's estate, a decree cannot be obtained in the absence of a grant of probate or administration. Therefore, the Claimant has admitted that she requires the Grant *Ad Litem* and the Grant *Ad Colligenda Bona*, in order that the instant matter be brought to fruition and so that she can collect and receive damages on behalf of the deceased's estate.

### **III. Issues to be decided by this Court and the Submissions of the Claimant and Defendants on those Issues**

[27] The two main issues for determination by this Court are:

- a. Whether the Claimant had locus standi to commence an action on behalf of the deceased estate prior to receiving the Grant of Letters of Administration with Will Annexed; and*
- b. Whether the Claimant could be granted administration limited to an action after the proceedings have already commenced in the substantive claim.*

#### **Claimant's Submissions**

[28] In relation to the two main issues, the Claimant submits that she did, in accordance with the law, have locus standi to commence an action on behalf of the deceased estate prior to receiving the Grant of Letters of Administration, and further that the Court can grant to her administration limited to the substantive action after the proceedings have already commenced.



[29] In support of that submission Counsel for the Claimant stated that the effect of **section 10(1) of the Administration of Estates Act Chap. 9:01** is that a named executor will derive his legal title to sue from the testator's Will, such legal title which vests at the time of the testator's death, and is not dependant on any grant of probate or grant of letters of administration. To this end, Counsel for the Claimant emphasised that Jenine Titus and Ronald Roberts were the deceased's named executors in his Will, and that neither executor had effectively renounced their executorships.

[30] Counsel maintained that the letters dated 20 December 2009 and 22 January 2013 signed by Ronald Roberts and Jenine Titus respectively, were intended to transfer each executors' rights and responsibilities to the Claimant rather than to renounce same absolutely. Further, Counsel submitted that neither of the letters was compliant with **rule 36 of the Non-Contentious Business Rules, First Schedule, Wills and Probate Act Chap. 9:03** which sets out the form which a renunciation by an executor ought to take. Further, neither of the letters was ever filed in the Probate Registry, High Court of Justice. Counsel submitted that in these circumstances, neither of the two executors could be said to have renounced their duty as executor.

[31] Thus, Counsel maintained that the Claimant as the lawful Attorney of the named executors was vested with the right to institute the instant action at the date of filing, even in the absence of a grant. Therefore the substantive action is validly constituted.

[32] That aside, Counsel for the Claimant submitted that the Grant of Probate is nonetheless required to maintain the action and obtain judgment, only because it is the method recognized by the Rules of Court by which the named executors can prove the fact of their executorships. Thus, in the absence of or pending the grant of probate, executors are entitled to apply to the Court for *grants ad litem* and *ad colligenda bona* to maintain and obtain judgment after the action has commenced.

### **Defendants' Submissions**

[33] On the other hand, the Defendants submit that the Claimant did/does not have locus standi to commence the substantive claim against them, and further that the Court

cannot now after the proceedings have already commenced, lawfully grant to the Claimant a grant *ad litem* or *ad colligenda bona* to enable the Claimant to maintain the substantive action.

[34] In support of their contention, Counsel for the Defendants contended that section **21 of the Wills and Probate Act Chap 9:03** provides that “*No Will of any person deceased shall have any effect whatever, either in law or equity, or shall pass any right, title, or interest whatever, until same has been duly proved in accordance with the provisions of this Act.*” Additionally, Counsel for the Defendants emphasised that **section 10(4) of the Administration of Estates Act Chap. 9:01** provides that “*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.*”

[35] The Defendants contended that the position in Trinidad and Tobago is unlike the position in the United Kingdom, where on the death of the testator real estate devolves to the personal representative. According to the Defendant, the executor in Trinidad and Tobago derives his title from his appointment by the Court and it is therefore submitted that as a general rule the executor can do nothing in respect of the deceased’s estate until he obtains a grant from the Court.

[36] In relation to the initiation of an action when the Claimant does not have the required Grant, the Defendant therefore contended that the Claimant would not have had locus standi to initiate the substantive claim on the date of filing as the claimant did not possess the necessary grant before the hearing of the action nor was an application made for any limited grant prior to initiating the action, and as such no cause of action was vested in her thus making the substantive claim a nullity.

[37] In further submissions, the Defendant made clear that in any event the two executors in the instant case had effectively renounced their duty as executor by their letters dated 20 December 2009 and 22 January 2013, and thus neither could transfer any

power to the Claimant to apply for the grant in the estate of the deceased by virtue of the respective Deeds of Power of Attorney.

[38] Further, the Defendants submitted that even if the Claimant were to obtain the requisite grant or a limited grant appointing her the administrator ad litem, such would not cure the defect in the substantive claim since it cannot relate back to the date of commencement of the substantive claim so as to give the Claimant standing where none existed.

#### **IV. The Law and its application to the issues**

##### **(i) Law**

[39] At the basis of the instant application is **section 10 of the Administration of Estates Act Chap. 9:01**. Section 10 of that Act, in so far as is material to this case, provides that:

*“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.”*

[40] The conjoint effect of **section 10 (1) to (4) of the Administration of Estates Act**, is that where a person dies testate, the testator’s estate shall, at the time of testator’s death become vested in the executor(s) appointed in the testator’s last Will. The position is such that the executor becomes the beneficial owner of the testator’s property as from the time of the testator’s death, and the vesting of the bare legal title to the testator’s estate in the Administrator General by virtue of **section 10(4) of the Act** does not alter that fact. As beneficial owner, the executor may initiate a claim in preservation of the testator’s estate even in the absence of a grant, as the executor derives his power from the testator’s Will.

[41] However, the situation is different where a person dies intestate. When a person dies intestate then at the time of that person’s death, his/her estate shall become vested in the Administrator General established under the **Administration of Estates Act** until such time as a personal representative is granted letters of administration in the deceased’s estate, and therefore a personal representative can only initiate a claim in respect of the deceased’s estate upon receipt of a grant by the Court.

[42] This distinction between the devolution of a deceased’s estate when a deceased dies testate as opposed to intestate, was acknowledged by the Court of Appeal in the matter of **Arthur v Gomes (1966) 11 WIR 25**. In that case, Wooding CJ, making reference to the Privy Council decision in **Chetty v Chetty (1916) 1 AC 603**, explained that-

*“...It is essential to bear in mind that the appellant is the executor and not an administrator of the estate.....The reason for so doing is made clear by the judgment of the Privy Council delivered by Lord Parker, in Chetty v Chetty [1916] 1 AC 603, LR 43 Ind App 113, 85 LJPC 179, 114 LT 1002, PC, 23 Digest (Repl) 54, 416). I quote from the judgment as follows – see {[1916] 1 AC 603 at pp 608/9):*

*'It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the court, he is allowed to prove his title. An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant.'*

[43] Thus, I disagree with the defendant's contention that the position in Trinidad and Tobago is contrastingly different to the position in the United Kingdom, where on the death of a testator real estate devolves to the executor. Such contention is not true in so far as it relates to a person who dies testate having in his Will appointed an executor who has not renounced probate. In fact, **section 1 of the Administration of Estates Act 1925 (UK)**, (which Counsel for the Defendants contended does not exist in Trinidad and Tobago statute) is similarly worded **to section 10(1) of the Administration of Estates Act of Trinidad and Tobago**.

[44] Further, the Court of Appeal in **Arthur v Gomes** (*supra*) and the Privy Council in **Chetty v Chetty** (*supra*), approved of the same principle expressed in the seminal English case of **Ingall v Moran (1944) 1 All ER 97** that-

*"it is well established that an executor derives his legal title to sue from the testator's Will. The grant of probate before the hearing is necessary only because it is the only method recognized by the rules of court by which the executor can prove the fact that he is the executor..."*

[45] Thus an executor may initiate a claim against another in respect of the testator's estate even prior to the receipt of a grant proving the testator's Will. However, in order to obtain a decree or order of the Court in respect of a claim initiated by an executor, such executor will, in accordance with the rules of the court, require a limited grant to sustain

the claim until such time as the full grant is obtained and the Will proven. Such limited grant can take the form of a grant *ad litem* and *ad colligenda bona*.

[46] The grant *ad litem* enables a representative of the estate to sue on behalf of the estate or defend a suit where the estate has been sued prior to a full grant being obtained, whereas, the grant *ad colligenda bona* or preservation grant enables the representative with the power, particularly in circumstances where the estate of the deceased is in danger of spoliation, to collect and preserve the deceased's estate pending the making of a full grant. The circumstances in which either of these limited grants may be given are provided for at **rule 25 to 27 of the Non-Contentious Business Rules, First Schedule of the Wills and Probate Act**, which provides that-

*"25. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Court.*

*26. Applications under subsection (1) of section 35 of the Act shall be made upon motion to the Court, and the Court may require notice to be given to persons having prior right to a grant or to such other persons as it may think fit. A grant under this subsection may be limited as regards time or portion of the estate or otherwise as the Court may think fit.*

*27. No person entitled to a general grant in respect of the estate of a deceased person will be permitted to take a limited grant except under the direction of the Court."*

[47] Though the Court may direct that a person be given a limited grant to sustain a claim on behalf of a deceased's estate, it sometimes occurs, as in the instant matter, that the representative of the estate initiates a claim in the absence of a grant and thereafter seeks to sustain the claim by applying for a limited grant after the proceedings have already commenced. When this occurs, an issue often arises as to whether the doctrine of relation back would apply so as to sustain the claim that has already commenced.

[48] It is by now well established, that where a personal representative of a person who died *intestate*, initiates a claim and thereafter applies to the Court for a limited grant, the grant of limited administration will not have the effect of validating the claim already

commenced by that personal representative. This is because a personal representative of an intestate deceased derives his/her power to sue on behalf of the deceased's estate from the grant of Letters of Administration. Therefore, any proceedings initiated without that grant or at least a limited grant given by the direction of the Court, will be a nullity and the doctrine of relation back will not apply to sustain a matter which the personal representative had no locus standi to initiate. As stated by Wooding CJ in **Arthur v Gomes** (supra), "*the doctrine of relation back cannot breathe new life into a corpse*", in other words it does not vest powers which are not already had at the time that the limited grant is obtained.

[49] The situation of an executor who initiates a claim in the absence of a grant is however different. Since the deceased's estate vests in the executor as beneficial owner from the time of the deceased's death, and given that the executor derives his power to sue on behalf of the estate from the Will of the testator, then the doctrine of relation back will apply.

[50] Thus, an executor who has initiated proceedings and thereafter applies for a limited grant, may have the initiated proceedings sustained so that a decree can be obtained by the Court following the receipt of the limited grant. The proceedings though commenced prior to receipt of the limited grant are sustained by the doctrine of relation back because it pertains to a power to sue which is already within the lawful capability of an executor, but which does not lie within the power of a personal representative who represents the estate of an intestate deceased.

[51] Thus, from a review of each of the cases submitted by the Defendant in respect of the doctrine of relation back, it is observed that each concerned the position of an administrator of a deceased who died *intestate* and thus did not have the power to initiate proceedings without a grant and therefore the subsequent receipt of a limited or full grant was not sufficient to validate proceedings previously commenced in the absence of a grant: see **Ramnarace v Ramnarace HCA No. CV2013-05040**; **Roopnarine Singh et al v Ramjohn et al HCA No. CV2014-03884**; and **Archbold v Camacho (1960) 3 WIR 40**. However, none of those cases is authority for stating that the doctrine of relation back

cannot apply where proceedings are initiated by an executor or his attorney prior to receipt of a full or limited grant.

[52] Further, in light of the issues surrounding the executors' respective letters dated 20 December 2009 and 22 January 2013 and the question of whether those letters amount to a renunciation of probate by both executors, it is important in the instant matter to note the circumstances in which an executor can be said to have effectively renounced his/her executorship.

[53] **Rule 36 of the Non-contentious Business Rules, First Schedule, Wills and Probate Act** provides:

*"Renunciation shall be in such of the forms set out in the Appendix hereto or as nearly thereto as may be applicable to the case."*

[54] **Form No. 19 in the Appendix of the Non-contentious Business Rules** sets out the format which a renunciation of probate ought to resemble. It requires that an effective renunciation by an executor state the following:

- (i) the name of the deceased, address at time of death and date of death;
- (ii) the date of the deceased's Will and the persons named as executor therein;
- (iii) a declaration from the executor that he/she intends to renounce, stating that said executor has not intermeddled in the estate of the deceased and will not thereafter intermeddle therein with intent to defraud creditors;
- (iv) an express statement by the said executor that he/she do hereby renounce all his/her right and title to the probate and execution of the said Will;  
*and*
- (v) it must be signed by the said executor, dated and signed by one witness.

[55] By common sense, it is clear that once an executor has drafted and executed his or her renunciation, said renunciation will only become effective upon being filed at the Probate Registry, High Court of Justice and accepted by the Registrar.



[56] Further, **section 12 of the Wills and Probate Act** makes absolutely clear that *“where a person appointed executor by a Will...renounces probate of the Will, his rights in respect of the executorship shall wholly cease and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.”*

[57] The position expressed in **section 12** is further emphasised at **rule 37 of the Non-contentious Business Rules, First Schedule, Wills and Probate Act** which provides that *“No person who renounces probate or administration of the estate of a deceased person in one character is to be allowed to take representation to the same deceased in another character.”*

[58] Thus, the law is clear - an executor who, consistent with **rule 36 and Form 19 of the Non-contentious Business Rules**, effectively renounces probate or his/her executorship cannot thereafter seek to grant to another person his/her rights and responsibilities as an executor pursuant to a power of attorney.

**(ii) Application of the law to the issues**

[59] Applying the law to the instant matter, I am of the view that this is an appropriate case for the Court to appoint the Claimant as **administratrix ad litem** and **ad colligenda bona** so as to enable the Claimant to sustain an action on behalf of the deceased's estate. I am also of the view that the doctrine of relation back will apply so as to maintain the substantive claim initiated by the Claimant.

[60] The fact is that the deceased in the instant matter died testate and appointed two executors/trustees of his estate, namely: Ronald Roberts and Jenine Titus. I agree with Counsel for the Claimant insofar as she submitted that while both the aforementioned letters dated 20 December 2009 and 22 January 2013, purport to relinquish rights and duties of the executor and executrix respectively, it is immediately apparent that both letters fail to comply with or to come close in substance to **Form 19 of the Non-contentious Business Rules**.

[61] Jenine Titus' letter dated 22 January 2013 fails to: (i) state the date of execution of the deceased's Will; (ii) include a statement that she has not intermeddled in the deceased's estate and will not thereafter intermeddle in the estate with the intent to defraud creditors, and (iii) contain an attestation by a disinterested witness. Similarly, Ronald Robert's letter dated 20 December 2009 also fails to: (i) state the date of the testator's death; and fails to (ii) include a statement that he has not intermeddled in the deceased's estate and will not thereafter intermeddle in the estate with the intent to defraud creditors. Moreover, neither of these two letters was ever filed at the Probate Registry, High Court of Justice so as to give any of them any effect. This is evident from a review of the application dated 10 April 2015, which the Claimant filed at the Probate Registry for the Grant of Administration with Will annexed, said application which was exhibited as "T.J.S.1" to the affidavit of Tamara J Sylvester filed on 30 November 2016 in reply to the Defendants' submissions.

[62] Notably, however, I have considered that the content of the Deed of Power of Attorney executed by Ronald Roberts comes close to resembling the contents of **Form 19** *save that* Ronald Roberts *does not* therein state that he has not intermeddled in the estate of the deceased and will not thereafter intermeddle with the estate with intent to defraud creditors. Unlike the Deed of Power of Attorney executed by Jenine Titus, Ronald Roberts' Power of Attorney document contains an expressed provision that he (Ronald Roberts) "*relinquish[es] all rights, responsibilities and duties entrusted to [him] as one of the executor[s] and trustee[s] of the deceased's said Last Will.*"

[63] However, it is questionable whether his (Ronald Roberts) true intention was to renounce his duties as immediately after that express statement he goes on to appoint the Claimant as his lawful Attorney to do such matters as he could himself do as an executor. If Ronald Robert's statements in the Deed of Power of Attorney were intended to be a renunciation it would no doubt open up the probate application to queries, because although the document comes close to resembling **Form 19**, the statements made in the document are quite contradictory and the intention of Ronald Roberts is unclear.

[64] Nonetheless, even if I were to accept the contents of Ronald Robert's Power of Attorney as an effective renunciation (*which I have difficulty in accepting*), the fact is that

the Claimant is also the lawful Attorney of Jenine Titus, and I cannot find any evidence that Jenine Titus had effectively renounced probate or her executorship.

[65] I am therefore satisfied that both executors have not effectively renounced probate or their executorship. Rather, they have by virtue of Deeds of Power of Attorney transferred their rights and responsibilities as executors to the Claimant. Thus in accordance with **section 10(1) of the Administration of Estates Act**, the property of the deceased would have vested in both executors from the time of the deceased's death. It followed, that when Jenine Titus and Ronald Roberts, by virtue of Deeds of Power of Attorney dated 22 April 2011 and 24 December 2014 and registered as DE20110123161 and DE201500143177, appointed the Claimant as their lawful Attorney, as stated in the Deeds of Power of Attorney, the Claimant would have effectively been given the power to "*generally act in relation to the subject property and all other matters in which the executor may be interested or concerned as fully and effectually in all respects as [each executor, Jenine Titus and Ronald Roberts] could do.*"

[66] It follows, that the same power that Jenine Titus and Ronald Roberts would have had as executors of the deceased's estate, to initiate an action in respect of the estate in the absence of the grant, is the same power that the Claimant, as their lawful Attorney, would have. Thus, the Claimant was vested with locus standi to initiate the claim in respect of the deceased's estate. The substantive claim was brought by the Claimant, not in her own personal capacity but in her capacity as lawful Attorney, on behalf of the executors of the estate. Thus, the Claimant's substantive claim is validly initiated.

[67] However, applying the principle established in **Arthur v Gomes** (*supra*) and **Chetty v Chetty** (*supra*), consistent with the rules of Court, a limited or full grant would still be required by the Claimant in order for the Claimant to sustain the action and obtain a decree.

[68] The circumstances of the instant matter are such that both of the executors appointed by the deceased in his Will, reside outside the jurisdiction in the United States of America. Both executors have, through the respective Deeds of Power of Attorney,

given the Claimant their consent to make the application for the grant and also to pursue any claim required to commence, carry on or defend all actions and other proceedings touching the subject property or in connection with the estate of the Deceased. Therefore, the requirements of **rule 25 of the Non-Contentious Business Rules**, for the grant to the Claimant by this Court of a limited grant, are satisfied.

[69] Thus, the Court has found that the Claimant has/had locus standi to initiate the substantive claim in this matter and thus the substantive claim as filed is valid. Further, the circumstances are appropriate for the Court to direct a limited grant of administration to the Claimant. Additionally, in the instant matter the doctrine of relation back will apply thus sustaining the Claimant's substantive claim and enabling the Claimant to obtain a decree of the Court in respect of same.

#### **V. Disposition**

[70] In light of the above analyses and findings, the Court is prepared to grant the relief sought in the Claimant's application filed 4 February 2016. Accordingly, the order of the Court is as follows:

#### **ORDER:**

- I. The Claimant be and is hereby appointed Administratrix ad Litem in the estate of Megan Roberts also called Emmanuel Megan Roberts.**
- II. The Claimant be and is hereby awarded a Grant Ad Colligenda Bona limited for the purpose of maintaining her substantive claim.**
- III. The Claimant in her capacity as *Administratrix Ad Litem* and *Ad Colligenda Bona* of the estate of the deceased, be substituted for the Claimant in her capacity as the lawful Attorney for Jenine Titus (nee Roberts) and Ronald Roberts, the executors named in the Last Will and**

Testament of the deceased, pursuant to rule 19.2(5) of the Civil Proceedings Rules 1998.

- IV. That the Amended Fixed Date Claim filed on 11 December 2015 and the Statement of Case filed on 11 December 2015 each be amended to substitute the Claimant in her capacity as *Administratrix Ad Litem* and *Ad Colligenda Bona*, for the Claimant in her capacity as lawful Attorney on or before the 4 April 2017.
- V. Consequently, permission is granted to the Defendants to amend the Defence and Counterclaim filed on 28 January 2016, if necessary, on or before the 25 April 2017.
- VI. Permission is also granted to the Claimant to amend the Reply and Defence to Counterclaim filed on 14 March 2016, if necessary, on or before the 9 May 2017.
- VII. Costs of the Claimant's application filed on 4 February 2016 to be costs in the cause.

Dated this 14<sup>th</sup> day of March, 2017

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Robin N. Mohammed  
Judge