

REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
Claim No.: CV2015-03130

**IN THE MATTER OF THE ESTATE OF MALCOLM ADDISON
OTHERWISE EDITH MALCOLM ADDISON DECEASED
WHO DIED ON THE 22ND DAY OF DECEMBER 2001
AT PORT-OF-SPAIN GENERAL HOSPITAL
LATE OF 27 BOWEN STREET, TUNAPUNA**

BETWEEN
JUDITH SEECHARAN ADDISON
(the Legal Personal Representative of the Estate of Malcolm Addison otherwise
Edith Malcolm Addison deceased)

Claimant

AND
HUGH ADDISON

First Defendant

STEPHEN ADDISON

Second Defendant

CAROL ADDISON-LEWIS

Third Defendant

CLIFTON ADDISON

Fourth Defendant

CYNTHIA ADDISON-SMITH

Fifth Defendant

DAVID ADDISON

Sixth Defendant

MERVYN ADDISON

Seventh Defendant

KEITH ADDISON

Eighth Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 3 May 2022.

Appearances:

1. Ms. D. Seecharan Attorney-at-law for the Claimant.
2. Mr. R. Bain, Attorney-at-law for the Defendants.

DECISION

1. Before the Court for its determination is the Claimant's Fixed Date Claim Form and Statement of Case filed on 21 September 2015 and 22 October 2018 respectively and the following relief has been sought:

- a. An order that the Claimant in her capacity as Legal Personal Representative of the estate of Malcolm Addison otherwise Edith Malcolm Addison deceased (the deceased), be at liberty to sell the estate property described as ALL AND SINGULAR that certain piece or parcel of land situate at Tunapuna in the Ward of Tacarigua, in the Island of Trinidad comprising FIVE THOUSAND SUPERFICIAL FEET be the same more or less delineated and with the abutments and boundaries thereon shown on the Plan or Diagram annexed to a certain deed dated the 24 day of February 1966 and registered as No. 3352 of 1966 and thereon numbered "5" and which said piece or parcel of land is known as Lot No. 5 Henry Street, El Dorado, Tunapuna (the said property).
- b. An order that the Defendants do deliver vacant possession of the estate property forthwith.
- c. An order that the Defendants do allow the conduct of a valuation report for the purpose of fixing a sale price.
- d. An order that the Registrar of the Supreme Court be empowered to execute all necessary deeds and assurances to give effect to the sale on behalf of the beneficiaries.
- e. That the costs of this application be borne by the beneficiaries.
- f. That the costs associated with the sale of the estate property be borne by the estate.
- g. That the proceeds of sale be distributed according to the law.
- h. Such further and/or other relief as the Court may deem just.

And by way of Injunctive Relief:

- i. An injunction restraining the defendants whether by themselves, their servants and/or agents or however otherwise from molesting or otherwise harassing the Claimant.

- j. An injunction restraining the defendants whether by themselves their servants and/or howsoever otherwise from entering onto or treating with the estate property in any way whatsoever.
2. By way of counterclaim, the Defendants sought the following relief:
 - a. An account of the financial assets that were improperly excluded in the inventory of the Deceased's assets in the Claimant's application for the Grant of Letters of Administration of the deceased's estate.
 - b. A declaration that the Defendants are entitled to a half- share of the deceased's estate in an amount consistent with the account of the financial assets that were improperly excluded in the inventory of the Deceased's assets in the Claimant's application for the Grant of Letters of Administration of the deceased's estate.
 - c. Interest on any sum that may be found to have been due to the Defendants by virtue of the proper administration of the deceased's estate.
 - d. A declaration that the issue of the deceased are the only persons entitled to have the lease renewed in their names.
 - e. An order that the lease be renewed in the name of Keith Addison.
 - f. Costs.
 - g. Any further or other reliefs as the Honourable Court may consider reasonable in the circumstances of the case.

The Claimant's facts:

3. The Claimant is the lawful widow of the deceased who passed on 22 December 2001. By Grant of Letters of Administration on 23 October 2009 the Claimant was appointed LPR of the deceased's estate. The Claimant and the deceased had no children together but the Defendants are the deceased's children and they together with the Claimant, are the beneficiaries of the deceased's estate.
4. By virtue of Deed No. 3600 of 1966 the deceased became the lessee of the said property for a term of 30 years commencing in 1964 with the option to renew the said lease.

5. The Claimant pleaded that the deceased did not assign his leasehold interest in the said property, same was his only asset and he lived there until 1999. Thereafter he moved in with the Claimant at her residence.
6. Since obtaining the Grant of Letters of Administration the Claimant has been unable to administer the estate, as the Defendants have refused to co-operate with her so as to enable her to exercise her duties as LPR. Furthermore, the Defendants effected renovations and alterations to the property without the Claimant's permission and claim that they own same.

The Defendants' facts:

7. The Defendants pleaded that the deceased did not assign his leasehold interest in the said property and when the lease expired on 31 December 1994, he failed to renew it. Consequently, they argue that he relinquished any interest he had in the said property and they further contend that he abandoned same.
8. The deceased, they claim had other assets apart from the said property including an award of \$198,000.00 by the High Court.
9. The Defendants denied that the deceased contributed to the building of the house on the said property and pleaded that construction began in 1962 and continued over time. It was outlined that the Third Defendant, Carol Addison-Lewis, secured funding through a loan from CLICO and although the mortgage deed was the name of the deceased, she repaid the loan.
10. With respect to payment of taxes the Defendants maintained that they paid same after the deceased's death.

Evidence:

11. At the trial of the matter, the Court heard evidence from the Claimant, David Addison, Stephen Addison and Keith Addison.

12. The Claimant testified that she did not have the renewed deed of lease and she adduced no evidence as to the renewal of the lease before the Court. Ms Addison stated in cross-examination that the deceased moved in with her in 1999 and resided with her until he passed away in 2001.
13. David Addison testified that he assisted his siblings in paying the land and building taxes for the said property and he maintained that the deceased did not pay taxes for same. David accepted that the property was for the use of the family and he also testified that he lived in Trincity for approximately 20 years. This witness accepted that his information about the deceased's receipt of a High Court award came from a newspaper article.
14. Mr Steven Addison testified that he lived in Dinsley. However, he maintained that he lived also at the said property. This witness stated that the renovations on the house were never completed and testified that he paid land and building taxes prior to 2001. He further testified that the house on the said property belonged to the family and he had no knowledge about any previous court matter between Carol and the deceased.
15. Mr Keith Addison testified that he lives at the said property. This witness stated that the house is a familial home and that the deceased lived at the subject property until 1999.
16. No witness statement was filed on behalf of the Third Defendant in accordance with the Court's directions and although this Defendant was present at the virtual trial, she was not permitted to give any evidence.

Issues:

17. Before the Court for its determination are the following issues:
 - a. Whether the subject property forms part of the deceased's estate;
 - b. Whether the Defendants are the effective owners of the house on the subject property and/or whether they hold any subsisting interest in the said property.

- c. Whether the Defendants are entitled to the declarations sought in their counterclaim with respect to the outlined financial assets which they claim are vested with the deceased's estate.

The Law:

18. Section 30 of the Wills and Probate Act Chap. 9:03 provides that:

“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;

(b) where no executor has been appointed, or the executor is absent from Trinidad and Tobago, or is unable or unwilling to act—

- (i) the residuary devisee or residuary legatee;
- (ii) a devisee or legatee;
- (iii) the next of kin;
- (iv) the Administrator General.”

19. Section 24(4) of the Administration of Estates Act Chap. 9:01 provides that:

“24(4). Where the intestate dies leaving a spouse and more than one child, the surviving spouse shall take one-half the estate absolutely and the remaining one-half shall be distributed to or held on trust for the children.”

20. In **Elaine Knowles v George Knowles [2008] UKPC 32** the court considered the interplay between ownership and gratuitous familial development of a property and at paragraph 27 the Board stated:

“27. ... In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free...”

Tenant at sufferance:

21. In **Hill and Redman’s Law of Landlord and Tenant (Division A) the authors at paragraph 83** stated:

“[83] A tenancy at sufferance arises where a person who has held by a lawful title continues the possession after the title has determined without any statutory right to retain possession and without either the agreement or disagreement of the person then entitled to the property. This is so whatever was the nature of the tenant's former estate, whether he was tenant for years, or the undertenant for years, or a tenant at will. The tenancy arises by implication of law and cannot be created by contract between the parties. *A tenancy at sufferance does not arise, however, upon the holding over by one whose title was created by act of law; and there can be no tenancy at sufferance against the Crown. In these cases the person holding over is a mere trespasser. Where the landlord consents, expressly or impliedly, to the holding over there is created a tenancy at will, and upon receipt of rent, it will, subject to a contrary inference from the facts of the case, become a tenancy from year to year or other appropriate periodic tenancy upon the terms of the old tenancy so far as applicable to such a tenancy.*”

(Emphasis Court's)

Resolution of the issues:

22. In resolving the issues, the Court considered that the said property was used as a family home as was outlined by all of the Defendants' witnesses. The Court noted that the majority of the Defendants would have been minors at the time the house was constructed and further noted that a common element of the Defendants' evidence was the assertion that as they grew and began to work they renovated the house without the deceased's assistance. These renovations were effected to make themselves more comfortable as they were a "growing family". There is nothing on the evidence which suggests that the Defendants' father, the deceased, ever encouraged them to believe that he had handed them his interest in the property and his kindness towards them in enabling them to use the family home, rent free, should not now be used as justification for any curtailment of his/or his estate's interest in same.

23. By Deed of Lease No. 3600 of 1966 dated 4 March 1966 the deceased became seised and possessed of the subject property for a term of 30 years commencing from 1st January 1964. This interest was subject to the right of renewal and the term created expired as at 31 December 1993.

24. Clause 3(b) of the lease stated:

“That if the Lessee shall be desirous of taking a new lease of the Demised Premises for a further term of Thirty Years to commence from and after the expiration of the term hereby granted and shall at least six calendar months before the expiration of the said term signify such desire by a notice in writing to be delivered to the Lessor and if at the expiration of the said term no rent due hereunder shall be in arrear nor shall there be existing any breach of any covenants herein contained and on the part of the Lessee to be observed and performed then and in such case the Lessor shall at the sole cost and expense of the Lessee grant to the Lessee a new lease of the

Demised Premises for a further term of 30 years to commence from and after the expiration of the term hereby granted at the like rent and subject to the like covenants and provisions as are herein contained except this present covenant for renewal”.

25. There is no evidence that a notice of renewal was delivered to the Lessor in compliance with Clause 3(b) and the Claimant testified that she was unsure if the deceased made any such application. The Court noted that a renewal request was however made after the expiration of the required renewal notice period and further noted that the Lessor, after the expiration of the first term, continued to treat with the deceased on terms which mirrored the operative terms when the term of years under the lease subsisted. The evidence showed that the State accepted rent and other statutory payments for the said property after the term of years created under the lease expired.
26. The Claimant’s Supplemental List and Bundle of Documents filed on 11 August 2020 contained a copy of a letter dated 27 January 1998 from the deceased to the Director of Surveys as well as copies of a writ, statement of claim and a memorandum of appearance in High Court Proceedings No. 950 of 1998. Those proceedings were between the instant Third Defendant as plaintiff and the deceased as the defendant.
27. The letter of 27 January 1998 expressed an unequivocal intention to renew the lease albeit that the renewal window pursuant to Clause 3(b) had closed. It is however readily apparent that no evidence was adduced to establish that steps were ever taken by the State to retake possession of the said property after the term under the lease expired. The Court further noted the nature of the Certificate of Assessment/Payment from the District Revenue Office as well as the copy of the WASA receipt for the year 1997 and inferred from these documents that although the request for a renewal was not made within the stipulated period outlined under the lease, the Lessor continued to accept payments and continued to recognise the deceased as the assessed owner of the building on the said property. The Court also noted that the handwritten notation on the certificate acknowledged the receipt

of lease rent for 1996 and 1997 thereby seemingly validating the deceased's continued occupation of the subject property.

28. The Defendants claimed that the renovations they conducted entitled them to absolute ownership of the family home on the subject property and they assert that the deceased abandoned the subject property.
29. Under the 1966 lease the deceased was named as lessee and the Defendants adduced no evidence which showed that the deceased relinquished his interest in same. At the time the deed of lease was executed in 1966, the Defendants were minors and thereafter they lived in this familial home over which there was a mortgage. This mortgage was also in the deceased's name and no credible evidence was adduced which demonstrated that the mortgage payments were not made by the deceased. In addition no evidence was adduced so as to establish that the deceased held the property on trust for any of the Defendants. Based on the evidence it is more probable to conclude that any renovations undertaken by the Defendants would have taken place over the years and same was gratuitously effected so as to benefit the family unit and in furtherance of their rent free use of same.
30. A Notice annexing joint reports was filed by the Claimant on May 17, 2021. There is before the Court a jointly commissioned valuation report of Linden Scott and Associates which places a value on the house on the subject property of \$1,050,000. There is also before the Court a jointly commissioned Quantity Surveyor's Report prepared by Campbell and Associates which places a value of the repairs to the house on the property at \$385,000. The Defendants in any event failed to provide any evidence of renovations effected to the subject property save for the renovations to the roof. The Court therefore formed the view that any equity which the Defendants acquired based upon their expenditure was set off against the accrued benefit of having use of the property during their adulthood.

31. The evidence established that the deceased left the subject property in 1999 and began to reside with the Claimant, his wife, and the Court adopted the view that this move could not be viewed as an abandonment by him of his interest in the said property.
32. Although the term of demised years created by the lease expired, the Lessor continued to treat with the deceased along the same terms which operated when the lease was subsisting. The Court received no evidence which established that the Lessor served any notice to quit upon the deceased or sought to regain possession of the subject land after December 1993.
33. Evidently, the 1966 lease had expired by the time the 27 January 1998 letter, for renewal, was issued. On a balance of probabilities, the Court felt that it is more likely than not that the deceased delivered this renewal request to the Lessor. This scenario is plausible given the fact that the deceased was still living at the subject property and the evidence clearly demonstrated that the lease rent was consistently paid in accordance with the terms of the 1966 lease. Notably these payments continued after December 1993.
34. Though mindful that the State is not a party to the instant proceedings, the Court formed the view that there likely exists a subsisting tenancy with respect to the subject property and this interest would vest in the deceased's estate.
35. The Court considered the documents in HCA 950 of 1998 and noted that the Third Defendant herein was the Plaintiff and she sought, *inter alia*, against the deceased:
 - a. A declaration that the deceased as defendant held the subject property on trust for the plaintiff and himself in equal shares;
 - b. A declaration that the plaintiff is an equitable tenant in common of the subject property.
36. In the instant proceedings the Defendants' position is that the deceased had no interest in the subject property at the date of his death in 2001 as the property is a familial home. This

position is however inconsistent with the position which was adopted by the Third Defendant in HCA 950 of 1998.

37. In the circumstances the evidence does not suggest that the deceased abandoned his interest in the subject property or that the house erected on same did not belong to him. Accordingly the Claimant, as the lawful widow and LPR of the deceased estate, is entitled to execute her duties as the personal representative of the deceased's estate. As LPR, immediate steps should be taken by the Claimant to regularise the estate's interest in the said property, as there would exist evident challenges for a sale of the dwelling house, if same is not done. By operation of law and subject to the payment of all debts attributable to the deceased's estate, as the deceased's surviving spouse, the Claimant will be entitled to a one half share and interest with respect to any subsisting interest in relation to the subject property inclusive of the value of dwelling house standing thereon and the remaining one half share has to be distributed among the Defendants.

38. Based on the aforementioned the Court hereby orders as follows :

- a. It is declared that the deceased was the owner of the dwelling house situate upon ALL AND SINGULAR that certain piece or parcel of land situate at Tunapuna in the Ward of Tacarigua, in the Island of Trinidad comprising FIVE THOUSAND SUPERFICIAL FEET be the same more or less delineated and with the abuttals and boundaries thereon shown on the Plan or Diagram annexed to a certain deed dated the 24 day of February 1966 and registered as No. 3352 of 1966 and thereon numbered "5" and which said piece or parcel of land is known as Lot No. 5 Henry Street, El Dorado, Tunapuna (the said property).
- b. The Defendants shall deliver vacant possession of the subject property within 90 days of the date of this judgment.
- c. The Claimant shall as the deceased's LPR be at liberty to sell the dwelling house on the subject property.

- d. That the costs associated with the instant action and with the sale of the dwelling house shall be borne by the deceased's estate.
- e. That the costs associated with the instant action on a prescribed costs basis in the amount of \$111,500.00 based on the agreed value of the dwelling house.
- f. The counterclaim is dismissed with no order as to costs.
- g. The proceeds of sale of the dwelling house standing on the subject property shall (after the deduction of all expenses), be distributed as between the Claimant and the Defendants according to the law.

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FRANK SEEPERSAD

JUDGE