

Republic of Trinidad and Tobago
IN THE HIGH COURT OF JUSTICE
Sub Registry: San Fernando

CV2021-02215

BETWEEN

JOSPEH JACOB

**(As the Administrator Ad Litem appointed by order dated
2nd November 2020 of the Estate of Melita Olive Jacob)**

RESPONDENT/CLAIMANT

AND

MALTEE JACOB

APPLICANT/DEFENDANT

Before: The Hon Mr Justice Westmin R.A. James

Date: 10th July 2023

**Appearances: Mrs Mohanie Maharaj-Mohan Attorney-at-Law for the
Applicant/Defendant
Nabilah Khan and Vishal Ramlal Attorneys-at-Law for the
Respondent/Claimant**

DECISION ON STRIKE OUT APPLICATION

1. By Notice of Application dated 5th April 2023 the Applicant/Defendant sought *inter alia* the following orders:
 - (a) That the Claimant's Fixed Date Claim Form and Supporting Affidavit filed on 9th July 2021 be struck out as an abuse of process and the Claimant has no locus standi to bring this action against the Defendant.
 - (b) That the Claimant's Statement of Case filed on 19th August 2021 be struck out as an abuse of process and the Claimant has no locus standi to bring this action against the Defendant.
 - (c) That the Claimant had ample time to amend his Fixed Date Claim Form and file a supplemental affidavit or Amended Statement of Case to include documentary evidence as the Administrator Ad Litem of the estate of Melita Olive Jacob who died on the 4th December 2001.
2. 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 quite frankly did not see any merit or utility in the Application and therefore dismisses the Application. This Court has also found that the Respondent/Claimant, as Administrator Ad Litem appointed by the Court prior to the commencement of proceedings, have the

requisite locus standi to initiate the substantive claim in this matter and thus the substantive claim as filed is valid.

3. The Applicant is legally aided and for that reason only, the Court would not order costs against her.
4. I have hereinafter detailed the reasons for my decision.

Background

5. By Notice of Application dated 29th September 2020 and filed on 8th October 2020 and the Affidavit of Joseph Junior Caesar Jacobs sworn to on the 29th September, 2020 and filed on 8th October 2020 along with exhibits, Joseph Jacobs sought leave to be appointed Administrator Ad Litem of the Estate of the deceased Melita Olive Jacob who died on 4th December 2001 for the purpose of commencing and maintaining proceedings for the possession of a chattel house located at 39 Thick Village, Siparia Old Road that is alleged to form part of the deceased's estate.
6. By Order dated 2nd November 2020 and stamped by the Registry on 6th November 2020, the Honourable Madam Justice Jacqueline Wilson dealing with the matter in Chambers ordered that the Intended Claimant Joseph Junior Caesar Jacobs, be appointed Administrator Ad Litem of the estate of the deceased for the purpose of commencing and maintaining proceedings for the possession of a chattel house located at 39 Thick Village, Siparia Old Road, that is alleged to form part of the deceased's estate.
7. By Fixed Date Claim Form and Affidavit in Support of the Fixed Date Claim on the 9th July 2021, the Respondent/Claimant as Administrator Ad Litem of the Estate of the deceased sought possession of the said property as Administrator ad litem. In the Affidavit Joseph Jacob in support of the Fixed Date Claim, the Respondent/Claimant deposed that he made the application to be appointed Administrator ad litem on the 8th October 2020. He further deposed that the Honourable Madam Justice Wilson dealt with the application to be appointed Administrator ad litem of the Estate of the deceased and by order dated 2nd November 2020 and stamped by the Registry on 6th November 2020 appointed Mr Joseph Jacob as Administrator ad litem. A copy of the order was attached to that Affidavit.
8. Judgment in Default was obtained by the Respondent/Claimant on 21st December 2021 for failing to enter an appearance and failing to file a Defence. That Judgment was subsequently set aside by order of the Honourable Madam Justice Wilson made on the 15th June 2022. The Court then order that the Respondent/Claimant file a Statement of Case.
9. On 19th August 2022, the Respondent/Claimant filed his Statement of Case. At paragraph 1 of the Statement of Case, the Respondent/Claimant pleaded that he was appointed Administrator Ad Litem of the Estate of Melita Olive Jacob by the Order of the Honourable Madam Justice Jacqueline Wilson. The Statement of Claim erroneously stated the date of the Order as 13th December 2023 and attached that order. That Order was the one in which the Honourable Madam Justice Wilson ordered that the Respondent/Claimant as the Administrator Ad Litem of the Estate of Melita Olive Jacob was entitled to possession of the property.

10. By Defence and Counterclaim filed on the 3rd October 2022, the Applicant/Defendant at paragraph 2 admitted the order by the Honourable Madam Justice Jacqueline Wilson. The Defence and Counterclaim went on to plead that notwithstanding that order there is no evidence of any grant sought or made on behalf of the Estate of Melita Olive Jacob. The Applicant/Defendant also pleaded that the property does not form part of the estate of the deceased. The Applicant/Defendant's counterclaimed for a declaration that she holds an equitable share and or interest in the property in question; alternatively, a declaration that she holds an equitable share and interest in the subject dwelling house; and alternatively that the Defendant pay to the Claimant his share an interest in the subject dwelling house.
11. By Reply and Defence to Counterclaim dated 1st February 2023, the Respondent/Claimant pleaded that no Letters of Administrator has yet been granted in the estate of the deceased and that the property does form part of the estate of the deceased.
12. The matter was reassigned to this Court in March 2023 and in April 2023, this Court gave directions for the filing of submissions on the application.

Issue

13. The sole issue for determination in this application is whether the Respondent/Claimant as Administrator Ad Litem appointed before the commencement of proceedings has locus standi to commence an action on behalf of the Estate of a deceased prior to receiving the Grant of Letters of Administration.

Principles Governing applications to Strike Out a Claim

14. The power of the court to strike out a Statement of Claim is provided for by Rule 26.2 (1) (b) and (c) of the CPR which provide as follows;

26.2 (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—

- (a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;*
- (b) that the statement of case or the part to be struck out is an abuse of the process of the court;*
- (c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or*
- (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.*

15. This is considered a nuclear option and the rule ought not to be used except in the clearest of cases where a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court.¹ Where an arguable case is presented or the case raises complex issues of fact or law, its use is inappropriate and so the burden

¹*Brian Ali v. The Attorney General of Trinidad and Tobago*, CV 2014 02843 Kokaram J at para 13; *Baldwin Spencer v The Attorney General of Antigua and Barbuda et al* (Civil Appeal No. 20A of 1997)

of proof in this regard is on the applicant.² The Applicant/Defendant, as applicants, must satisfy the Court that no further investigation will assist it in its task of arriving at the correct outcome. The Applicant must persuade the Court either that a party is unable to prove allegations made against the other party; or that the Statement of Claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.³

16. The Applicant contends that the Estate of the deceased has not been probated granting the Respondent Grant of Letters of Administration of the Estate. The further contend that pursuant to the Administration of Estate Act Chap 9:01 at section 10(4) the estate of a deceased who died intestate vests 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. She argues that the Letters of Administration having not been acquired by the Respondent/Claimant since the death of the deceased, the Respondent/Claimant cannot maintain a Claim before the Court and to allow such to be an abuse of process.
17. Further as it has well been established that pursuant to section 10(3) of the Administration of Estates Act, an expectant beneficiary on an intestacy will not have locus standi to bring a claim dealing with the estate in their personal capacity. That locus belonged to the Administrator since the deceased's estate vests in the administrator and not in the next of kin.⁴
18. To the Court, this application is a fundamental misunderstanding by the Attorney-at-Law for the Applicant/Defendant of who is the party in the proceedings. The Respondent/Claimant is not bringing this claim in his personal capacity but on behalf of the estate of the Deceased under a limited grant. This could be the only way to maintain an action against an estate who died intestate where the full grant has yet been granted.
19. Section 25 of the **Wills and Probate Act Chap 9:04** specifically provides the power to the Court to make limited grants.

25. Where any person shall die intestate or without having appointed any executor, or shall have appointed an executor but such appointment shall fail, or the executor named by the Will shall be under the age of twenty-one years, or shall be absent from Trinidad and Tobago and shall not have proved the Will, or where any person shall die out of Trinidad and Tobago but leaving any estate within Trinidad and Tobago; administration in respect of such estate shall be granted to the person entitled thereto:

Provided that if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the Court may in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient, and

² *Tawney Assets Limited v East Pine Management Limited and Ors* [2012] ECSC J0917-4; *Ian Peters v Robert George Spencer* [2009] ECSC J1222-1

³ *Tawney Assets Limited v East Pine Management Limited and Ors* [2012] ECSC J0917-4

⁴ HCA T92 of 1985 *Lenore Walcott v John Clement Alleyne* per Hamel Smith JA

any administration granted under this provision may be limited in any way the Court thinks fit.

20. In order for someone to act on behalf of the estate to commence a claim, they must obtain a decree or order of the Court in accordance with the rules of the court for a limited grant to sustain the claim until such time as the full grant is obtained and the Letters of Administration is obtained. Such limited grant can take the form of a grant ad litem.
21. The ad litem grant may be made with a view to beginning or carrying on or defending proceedings. It is not a general grant. Such a grant is limited to bringing or defending or carrying on particular proceedings. The grant ad litem therefore enables the Respondent/Claimant as 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. The circumstances in which such a limited grant may be given is 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.”

22. In *Abraham v Basdeo*⁵ the Court of Appeal of Trinidad and Tobago considered this type of Limited grant. The issue in that case turned on the scope of being appointed administrator ad litem (and being granted a grant ad colligenda bona) for the purpose of bringing a claim on behalf of the estate. The case turned on the correct interpretation of that limited grant; and it was held that its terms (ie for bringing and maintaining an action in assault and battery) did cover a cause of action in negligence. Mendonca JA in his judgment with which Narine JA and Moosai JA agreed indicated that Harris, J. in his judgment referred correctly to the law relating to a grant ad litem when he said:

“10 Administration may be granted limited to an action with a view to beginning or carrying on proceedings whether on behalf of the estate or against it. “If there is no personal representative of the deceased and it is necessary for the estate to be represented in legal proceedings, a grant of administration limited to an action (ad litem) may be made. **Such a grant is limited to bringing, defending or being a party to particular legal proceedings**”. (Parry and Clark the Law of succession 10th edition page 346; Halsbury's Laws of England (Volume 103 5th edition para 817)) (MY EMPHASIS).

⁵ *TT 2015 CA 31* delivered on 13 November 2015.

11 Where it is necessary for the Personal Representative of a deceased person to be made a party to legal proceedings (e.g.: a claim by or against the estate of the deceased), but the executors or other persons entitled to obtain a grant will not constitute themselves as personal representatives, a grant limited to bringing, defending or being a party to the claim or proceedings in question may be made to a nominee limited to bringing, defending or being a party to the claim or proceedings in question. The grant will in no case be a general grant (*Re Chanter's Goods* (1844) 1 Rob Eccl 273; *Davis v. Chanter* (1848) 2 Ph 545; *Re Dawson's Goods, Maclean and Maclean v. Dawson* (1859) 1 Sw & Tr 425.). **The claim or proceedings must be identified in the oath so far as possible and will be specified in the grant.**” (Tristram & Coote's Probate Practice 29th Edition Para. 11.334) (My emphasis),”

23. The Applicant/Defendant's argument that Letters of Administration supersedes a grant of Administration Ad Litem is correct but here there is not been any Letters of Administration yet granted so in those circumstances there is nothing to supersede the Administration Ad Litem.
24. Now it is well established as seen from in *Jogie v Sealy*⁶ 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. The Privy Council recognised that 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. The doctrine of relation back does not apply here as the Respondent/Claimant sought and was granted the limited grant to commence the action against the Applicant/Defendant, an approach recognised as valid by the Privy Council in *Jogie (supra)*. There is therefore no issue of, as put by Wooding CJ “breathing new life into a corpse.”
25. As outlined in the background above, prior to the commencing this claim, by Order dated 2nd November 2020 and stamped by the Registry on 6th November 2020, the Honourable Madam Justice Jacqueline Wilson dealt with the matter in Chambers without a hearing ordered that the Intended Claimant Joseph Junior Caesar Jacobs be appointed Administrator Ad Litem of the estate of the deceased for the purpose of purpose of commencing and maintaining proceedings for the possession of a chattel house located at 39 Thick Village, Siparia Old Road that is alleged to form part of the deceased's estate.
26. The Applicant/Defendant has not applied to vary, revoke or appeal the order of the Honourable Madam Justice Jacqueline Wilson. In fact, in its Defence, as outlined above, the Applicant/Defendant admitted the order by the Honourable Madam Justice Jacqueline Wilson but pleaded that notwithstanding that order there is no evidence of any grant sought or made on behalf of the Estate of Melita Olive Jacob.

⁶ [2022] UKPC 32,

27. In this case, the Respondent/Claimant's reliefs sought were in relation an order for the Applicant/Defendant to deliver up possession of the property, which it is alleged to be an asset of the estate. There was no personal representative of the estate at the time of the filing of the claim and in those circumstances, the Respondent/Claimant sought an order of the Court for the relevant limited grant of administration.
28. The argument raised by the Applicant/Defendant in their submissions that the Ad Litem order was only for the Respondent/Applicant to apply for Letters of Administration, not only flies in the face of the order but also contrary to the law which provides who is entitled to apply and be granted Letters of Administration which as stated has not been granted in this case.
29. Thus, the Court has found that the Respondent/Claimant who has a limited grant of Ad Litem obtained prior to the commencement of the substantive claim has/had locus standi to initiate the substantive claim in this matter. Therefore, this Court is resolute that the substantive claim as filed is valid and cannot be struck out.

/s/ Westmin James

.....

Westmin R.A. James

Judge