

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2007/HCV01116

**IN THE MATTER OF THE ESTATE OF
SEDRICK AUGUSTUS EVANGELIST** otherwise
called **CEDRIC ADOLPHUS EVANGELIST**
and **SEDRICK ADOLPHUS EVANGELIST** late
of Nightengale Grove, Bushy Park in the parish of
Saint Catherine, Salesman, deceased, intestate.

A N D

IN THE MATTER of an Application under Section
39 of the Administrator-General's Act.

Ms. Maria Gayle for the Administrator General.

Ms. Suzette Campbell instructed by Campbell & Campbell for Monica Baker.

Ms. Angella Cousins-Robinson instructed by Robinson & Clarke for Mr. Evangelist.

Heard: 11th and 15th June 2007 and 2nd July 2008

Campbell, J.

(1) The Administrator General has filed a Fixed Date Claim Form dated March 9, 2007 seeking the Court's opinion, advice or direction on the following:

- (a) Whether the Administrator General for Jamaica, as administrator of the estate of Sedrick Augustus Evangelist otherwise called Cedric Adolphus Evangelist and Sedrick Adolphus Evangelist, deceased is obliged, at the insistence of the spouse of the deceased, to take an action under the Limitations of Actions Act against the surviving joint tenant on the principles enunciated under *Myra Willis v. Elma Roselina Wills* Privy Council Appeal No. 50 of 2002 seeking a declaration that the deceased has acquired the joint property by adverse possession prior to his death;

- (b) Whether the Administrator General for Jamaica can be sued by a beneficiary should she refuse to bring the said Court action;
- (c) Whether Monica Baker, the declared spouse of the deceased, can bring the action as a beneficiary;
- (d) That the costs of the application be paid from funds in the estate.

(2) The application was supported by the affidavit of Lona Millicent Brown, the Administrator General. The affidavit that was sworn to on the 9th March 2007 states inter alia:

- (3) That Letters of Administration in the Estate of the deceased were granted to the Administrator General for Jamaica on the 28th day of November 2006 by the Supreme Court of Judicature of Jamaica. Exhibited hereto and marked "lmb1" for identification is a copy of the grant of Letters of Administration.
- (4) That the deceased was survived by his spouse Monica Baker, being so declared by Court Order issued on the 21st November 2005 in claim No. HCV 02950 of 2005 and eight children, namely Graham Evangelist, Cedric Evangelist Jnr., Marvin Evangelist, Josephine Evangelist, Marvia Evangelist, Mario Evangelist, Movita Evangelist and Peter Evangelist. Exhibited hereto and marked "lmb 2" for identification is a copy of the Court Order.
- (6) The deceased and his former wife, Shirley Gene Evangelist are joint owners of Lot 54 Nightengale Grove in the parish of St. Catherine Registered at Vol. 1127 Folio 320 of the Register Book of Titles (hereinafter called "the joint property") Exhibited hereto collectively marked "L.M.B.3" for identification is a copy of the Certificate of Title and Divorce Judgment Index 34713,1982 evidencing the divorce between the deceased and Shirley Gene Evangelist. Under the rights of survivorship, the joint property would devolve on the surviving joint tenant, Shirley Gene Evangelist and would not be treated as an asset of the deceased.
- (8) Monica Baker, the spouse of the deceased, has commenced action in Claim No. HCV 00041 of 2006 pursuant to the Limitation Action Act, wherein she claims that the interest of Shirley Gene Evangelist was extinguished and acquired by the deceased, who was the sole control and occupation of the property during his lifetime. Exhibited hereto collectively marked L.M.B.4 for identification are copies of the Fixed Date Claim form and Affidavit of Monica Baker in support thereof.
- (10) That I am doubtful of my role in respect of the proposed action and so seek the opinion, advice or direction of this Honourable Court on this issue.

(11) That Campbell & Campbell places reliance on the case of **Myra Wills v Elma Roselina Wills** Privy Council Appeal No. 50 of 2002 and has opined that the circumstances surrounding the occupation and use of the joint property is similar in most respects to the factual circumstances of that case. As such, they are confident of their chances of success in bringing the action for the estate.

(15) The uncertainty of outcome and the legal work involved can lead to estates incurring exorbitant legal fees without favorable results.

(3) The Administrator General is a creature of statute, The Administrator Generals Act, establishes that office. S21 of the Act provides:

“ Subject to this Act, the rights, duties, powers, and liabilities of the Administrator General, in applying for and obtaining letters of administration or letters testamentary, and in acting as administrator or executor, shall be the same in all respects as under similar circumstances the rights, duties, powers, and liabilities of private persons applying for and obtaining letters of administration or letters testamentary, or acting as administrators or executors would have been if this Act had not been passed.”

The Act mandates the Administrator General to keep full and complete accounts of all estates and trusts vested in or administered by him (see S9). When called upon by the Supreme Court he must furnish reports in respect of any particular account and of his administration generally (S.10).

S33 Provides for the Administrator General to sue and be sued in that name, as administrator of the estate of A.B. deceased. When in doubt on any point that concerns his rights and duties so permits him to seek the guidance of the Supreme Court.

(4) Halsbury Laws of England, 4th Edition, and paragraph 1193 states:

“It is the duty of personal representative to hold an even hand between all the beneficiaries of the estate. On the one hand they must not unduly delay the payment or provision of any of the legacies, but on the other, they ought not to sacrifice the interests of persons entitled to the remainder by realizing the estate for the benefit of a pecuniary legatee at an inopportune time when the value of the securities is low. They must act prudently and

properly in the management of the estate as a whole.... The court will not in general interfere with the exercise of discretion, but may do so when beneficiaries are absolutely entitled between them, to ensure that their unanimous wishes are complied with.

(5) Would the Administrator General be acting prudently and properly, if she refuses to initiate a lawsuit to determine if the deceased estate has the entirety of the interest in Lot 54 Nightengale Grove in the parish of St. Catherine, having acquired same under the principle enunciated in **Wills v Wills (Supra)**.

The Administrator General is concerned that she is not seized of vital facts which are necessary to undertake litigation, and that she is likely to be flooded by similar cases. Moreover she is of the view the facts in **Wills v Wills** are different from what obtains in the present circumstances.

(6) The Administrator General is also concerned that she is without the necessary resources to pursue this matter properly in the courts. The party who stands to benefit, Monica Baker, Attorney-at-law, is desirous of the matter being pursued. It is important to note that any claim that she would be able to pursue would have to be pursued during the life of her declared spouse, she may not have locus standi to bring such an action.

(7) It is hereby ordered:

- (a) The Administrator General seeks the legal opinion of the Attorney General Chambers as to the prospects of success of such a case being mounted.
- (b) To ascertain if the opinion of the learned Attorney General indicates that the case stands a reasonable prospect of success, whether that department would undertake prosecution of the matter on behalf of the Attorney General.
- (c) The attorneys-at-law for Monica Baker to provide the Attorney General with instructions to facilitate the legal opinion of the Attorney General.
- (d) In the event the Attorney General is not minded to deal with the matter, the Administrator General should return to the Supreme Court for further directions.