



[2020] JMSC Civ 119

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU 2019 CV 00429**

<b>BETWEEN</b>	<b>DANESHA ARTWELL</b>	<b>APPLICANT</b>
<b>AND</b>	<b>ADVANTAGE GENERAL INSURANCE COMPANY LIMITED</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>AND</b>	<b>ADMINISTRATOR-GENERAL FOR JAMAICA</b>	<b>2<sup>ND</sup> RESPONDENT</b>

**HEARD WITH**

**CLAIM NO. SU 2019 CV 01540**

<b>BETWEEN</b>	<b>KAVIN REID</b>	<b>APPLICANT</b>
<b>AND</b>	<b>ADVANTAGE GENERAL INSURANCE COMPANY LIMITED</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>AND</b>	<b>ADMINISTRATOR-GENERAL FOR JAMAICA</b>	<b>2<sup>ND</sup> RESPONDENT</b>

**IN CHAMBERS**

Mrs. Myoka Hudson-Buchanan instructed by Kinghorn & Kinghorn, Attorneys-at-law for the Applicants.

Ms. Houston Thompson instructed by Dunbar & Co, Attorneys-at-law for the 1<sup>st</sup> Respondent.

Ms. Geraldine Bradford, Attorney-at-Law for the 2<sup>nd</sup> Respondent.

10<sup>th</sup> and 19<sup>th</sup> June 2020

**Civil Procedure - CPR 11.6 - CPR 20.4 - CPR 26.1(2)(v) – oral application to amend relief being sought on the Fixed Date Claim Forms being made at the hearing of the claims.**

**Civil Procedure - CPR 21.7 - CPR 21.8 - interpretation - whether rules applicable in the Parish Courts - court's jurisdiction to appoint representative party or give directions to continue proceedings initiated in the Parish Court.**

**Law Reform (Miscellaneous Provisions) Act - section 2(1) - section 2(3) - limitation period - subsistence of actions in tort against estate of deceased.**

**Application to appoint administrator ad litem - claim filed after death and in the absence of a personal representative or court order appointing a representative party - claim invalid - inability of subsequent appointment of representative party to cure defect existing at the time of issuing claim.**

**C. BARNABY, J (AG)**

## **PROCEDURAL BACKGROUND**

[1] On the 10<sup>th</sup> June 2020, the applicants' Fixed Date Claim Forms for the appointment of administrator ad litem in the estate of Michael Melbourne came on for a hearing, pursuant to an order of the court on 2<sup>nd</sup> July 2019. The following further orders were made by the court on 14<sup>th</sup> January 2020:

(1) ...

(2) ...

(3) *The Claimant to file and serve Skeleton Submissions and List of Authorities addressing the court's jurisdiction to make orders sought in light of the fact that there is no cause of action before this court and the order being requested is to continue a matter in the parish court, by or before April 24, 2020.*

(4) *The 1<sup>st</sup> and 2<sup>nd</sup> Respondents to file and serve Response, if any to Written Submissions and List of Authorities by or before May 22, 2020.*

(5) ...

**[2]** No written submissions were file by any of the parties. Nevertheless, they were permitted to make oral submissions to enable the hearing to proceed as a scheduled. After hearing Counsel for the parties, judgment on the applications were reserved to today's date.

### **THE APPLICATIONS**

**[3]** The application of Ms. Danesha Artwell was initiated by way of a Fixed Date Claim Form dated and filed 23<sup>rd</sup> January and 11<sup>th</sup> February 2019 respectively. It was supported by her affidavit sworn 14<sup>th</sup> December 2018 and filed 11<sup>th</sup> February 2019.

**[4]** Mr. Kavin Reid's application also originated with a Fixed Date Claim Form dated and filed 20<sup>th</sup> December 2018 and 9<sup>th</sup> April 2019 respectively. Mr. Reid's application was supported by his affidavit sworn on 19<sup>th</sup> December 2018 and filed 11<sup>th</sup> February 2019.

**[5]** The grounds upon which both applications are made are identical and can conveniently be summarised thus:

1. On the 28<sup>th</sup> day of September 2012, each applicant was injured when a motor vehicle bearing registration number 7637EE collided into them;
2. That the motor vehicle particularised above was owned and being driven by the now deceased Michael Melbourne;
3. That Michael Melbourne is potentially liable, either solely or partially, for the collision into them;
4. That each applicant is unaware of the administrator of the estate of Michael Melbourne; and

5. That Advantage General Insurance Company Limited was the insurer of the motor vehicle bearing registration number 7637EE at the date of the collision, and holds subrogation rights in respect of any claim being brought against Michael Melbourne's estate.

**[6]** The orders sought on both applications are essentially the same. The following orders appear on the Danesha Artwell claim, the earliest of the two applications.

1. *The 1<sup>st</sup> Respondent, Advantage General Insurance Company Limited of 4-6 Trafalgar Road, be appointed Administrator Ad Litem in the Estate of Michael Melbourne for the sole purpose of protecting the interest of the Estate of Michael Melbourne in respect of the personal injury claim that the Applicant has commenced in the Spanish town parish court against the said Michael Melbourne.*
2. *Alternatively, the 2<sup>nd</sup> Respondent, the Administrator General of Jamaica be appointed Administrator Ad Litem for the estate of Michael Melbourne for the sole purpose of protecting the interest of the Estate of Michael Melbourne in respect of the personal injury claim that the Applicant has commenced in the Spanish town parish Court against the said Michael Melbourne.*
3. *Alternatively, such other person as this Honourable Court deems just be appointed as Administrator Ad Litem in the Estate of Michael Melbourne for the sole purpose of protecting the interest of the Estate of Michael Melbourne in respect of the personal injury claim that the Applicant has commenced in the Spanish Town parish court.*
4. *Such further and/or other relief as this honourable Court deems just be granted.*

[7] In summary, the substantive relief being pursued by each applicant is an order appointing an administrator ad litem to enable them to continue the personal injury claims they have filed against Michael Melbourne in the St. Catherine Parish Court.

[8] Almost at the end of her oral submissions, which are referred to later on in these reasons for judgement, Mrs. Hudson-Buchanan indicated her desire to apply to amend the order numbered three (3) on each of the Fixed Date Claim Forms. It was proposed to delete the words *“that the Applicant has commenced in the Spanish Town Parish Court”*, and replace them with the words, *“that the applicant seeks against the said Michael Melbourne.”* The resolution of this matter will be addressed subsequently.

#### **THE APPLICANTS’ EVIDENCE**

[9] It is Ms. Artwell’s evidence that on the 28<sup>th</sup> September 2012 she was walking along Grove Farm Main Road in the parish of St. Catherine, when a motor vehicle bearing registration number 7637EE overtook a line of traffic and collided into her. Sometime in 2014, her Attorneys-at-Law commenced an action against Michael Melbourne, the alleged owner and driver of the motor vehicle, in the St. Catherine Parish Court. The action was grounded in negligence and she claims damages as her relief.

[10] On the 25<sup>th</sup> November 2015, she obtained an order in those proceedings for substituted service against Advantage General Insurance Company Limited, the insurer of the motor vehicle. This was on account that Mr. Melbourne could not be located. Ms. Artwell avers that it was only on the application of the insurer to set aside the order for substituted service, which order was granted, that she became aware that Mr. Melbourne was deceased. A copy of the Death Registration Form is exhibited and shows that Mr. Melbourne died on the 28<sup>th</sup> September 2012, which coincides with the date of the alleged collision.

[11] It is also Ms. Artwell’s evidence that she has been prevented from pursuing her claim because she is unable to ascertain the personal representative of Mr. Melbourne.

[12] She avers further that the insurers have appeared in the St. Catherine Parish Court on behalf of Mr. Melbourne and is therefore poised to stand as administrator ad litem for the purposes of the claim. She has been advised and verily believes that the usual contract of insurance which Mr. Melbourne held with Advantage General Insurance Company Limited gives it the right to intervene, commence, take over and conduct legal proceedings on behalf of their insured; and where he is found liable, would be obliged to satisfy the judgment under the contract of insurance and the provisions of the **Motor Vehicle (Third Party Risks) Act**.

[13] In respect of the Administrator-General, whom she seeks to have appointed as administrator ad litem in the alternative, it is Ms. Artwell's evidence that she is entitled to a grant of letters of administration in Mr. Melbourne's estate and consequently, she is an appropriate person to be appointed administrator ad litem.

[14] Save that the action commenced in the St. Catherine Parish Court on behalf of Mr. Kavin Reid was filed on a different date, the contents of the affidavit sworn by him are identical to those of Ms. Artwell and do not require repetition.

### **THE 1<sup>ST</sup> RESPONDENT'S EVIDENCE**

[15] An Affidavit of Racquel Dunbar in Opposition to Fixed Date Claim Form was filed in answer to each of the applications. Both affidavits were sworn and filed on the 20<sup>th</sup> June 2019. The contents of both affidavits are the same in all material respects.

[16] Ms. Dunbar is an Attorney-at-Law in the firm representing the 1<sup>st</sup> Respondent. It is admitted that the matters arose out of a motor vehicle accident on the 28<sup>th</sup> September 2012 in the parish of Saint Catherine. It was also admitted that Mr. Melbourne was insured with the 1<sup>st</sup> Respondent at the material time, and that he was the driver of the motor vehicle licensed 7637EE. It is averred however, that the contract between the insured and Mr. Melbourne dissolved upon his death.

[17] It is denied that the 1<sup>st</sup> Respondent ever appeared before the St. Catherine Parish Court on behalf of Mr. Melbourne. It was Ms. Dunbar's evidence that the 1<sup>st</sup> Respondent had only ever appeared before that court to pursue its applications to set aside the orders for substituted service which were made in the proceedings there.

[18] Ms. Dunbar challenges the evidence of both applicants that they did not know that Mr. Melbourne had died. It was her evidence that they ought to have known on account that they are both residents of the community in which the deceased was set upon, beaten and killed because of the accident; and that the story of Mr. Melbourne's demise had been featured in the local daily newspapers.

[19] On the 1<sup>st</sup> Respondent's evidence, it has no connection or control over the estate of the deceased, has no contract with the deceased's estate, and has no personal relationship with him. It was contended that appointment as administrator ad litem was not just in relation to the incident but the actual estate of the deceased. It is in those premises that Ms. Dunbar concluded in her affidavits, that the 1<sup>st</sup> Respondent was not a fit and proper party to be appointed administrator ad litem.

[20] In concluding, it was prayed that the application to appoint the 1<sup>st</sup> Respondent as administrator ad litem be refused.

## **THE 2<sup>nd</sup> RESPONDENT'S EVIDENCE**

[21] Save for the names of the applicants and the plaint numbers assigned to their respective cases in the St. Catherine Parish Court, the contents of the Affidavit of Geraldine R. Bradford in Response, sworn and filed on 16<sup>th</sup> and 17<sup>th</sup> January 2020 respectively, were identical in both applications. Ms. Bradford is an Attorney-at-Law within the Attorney-General's Department and the affidavits were filed on behalf of the latter.

[22] Ms. Bradford's evidence is that the matters alleged on behalf of the applicants in the documents which constitute their respective claims in this court can neither be denied

or affirmed. The Administrator-General is not administering any Estate in the name of Michael Melbourne and knowledge of the estate comes to the 2<sup>nd</sup> Respondent from the perusal of documents served in these proceedings. In the absence of knowledge of the subject matter of the substantive claim, the Administrator-General could not fairly and competently conduct proceedings on behalf of Mr. Melbourne's estate.

[23] She goes further to say that no application has been made by the Administrator General to any court for an Instrument of Administration or Grant of Letters of Administration in the Estate of Michael Melbourne. She avers that consequent on amendments to section 12 of the **Administrator-General's Act**, ushered in by the **Administrator-General's (Amendment) Act** of 2015, the named functionary no longer had a statutory obligation or duty to apply for a grant of letters of administration in a deceased person's estate, in the absence of a minority interest. She contended that there is no proof of a minority interest in Mr. Melbourne's estate.

[24] Ms. Bradford, at paragraph 7 of her affidavit draws a distinction between the powers given to the court at CPR 21.7(2) and those given to the Administrator-General at section 12 of the **Administrator-General's Act**. She expressed her view in this way,

*...Rule 21.7(2) of the Civil Procedure Rules, 2002 is a procedural rule made pursuant to the Judicature (Rules of the Court) Act and is concerned with the appointment of a personal representative within in a limited capacity to defend a claim herein. This is in contrast to section 12 of the Administrator-General's (Amendment) Act 2015, which speaks to the issuing of a full Grant of Letters of Administration and the administration of a deceased person's estate in its entirety.*

[25] It was also Ms. Bradford's contention that CPR 21.7(2) does not limit the appointment of a personal representative to the Administrator-General. It extends to any person who does not have an interest which is adverse to that of the deceased's estate, and who can fairly and competently conduct proceedings on behalf of the estate.



[26] It was urged by Ms. Bradford that even if the court is minded to appoint the Administrator-General as administrator ad litem, such an order would not enable the applicants to pursue the claims they have filed in the St. Catherine Parish Court. It was her 'evidence' that the plaints were *void ab initio* having been commenced against "non-existing person(s)". In the circumstances, the appointment of a general or limited administrator would not relate back to validate the actions filed in the St. Catherine Parish Court because an administrator's right to bring and or defend proceedings runs from the date of appointment.

[27] Ms. Bradford prayed that the application to appoint the Administrator-General as administrator ad litem be refused.

### **SUBMISSIONS ON BEHALF OF THE APPLICANTS**

[28] In making her oral submissions, Mrs. Hudson-Buchanan repeated the matters raised in the affidavits of the applicants. She also prayed in aid section 2 of the **Law Reform (Miscellaneous Provisions) Act** in submitting that a claim on a tort subsists against the estate of Mr. Melbourne, and that until a personal representative is appointed, time does not begin to run against the applicants. The decision of Sykes, J (Ag), as he then was in **Dianna Harriot v Joy Blake and the Administrator General of Jamaica**<sup>1</sup> was recommend to the court in that regard and for the applicants' contention that the Administrator-General can be appointed as administrator ad litem to continue the proceedings in the St. Catherine Parish Court. Reliance was also placed on CPR 21.7(2) and it was contended that both respondents satisfied the prescribed criteria for appointment.

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<sup>1</sup> (JMSC, 11 June 2004)

[29] At the end of her oral submissions, Mrs. Hudson-Buchanan also advanced the position that the Supreme Court has the jurisdiction to appoint a person as administrator ad litem to take out proceedings in this or any other court.

### **SUBMISIONS ON BEHALF OF THE 1<sup>ST</sup> RESPONDENT**

[30] Ms. Thompson's oral submissions accorded with the contents of the Affidavit of Racquel Dunbar, except that she conceded that an appointment as administrator ad litem would be limited to proceedings in respect of the accident and not the entirety of Mr. Melbourne's estate.

[31] In response to the submissions of counsel for the Applicants as to an insurer's duty to an insured, it was submitted that the obligation of the 1<sup>st</sup> Respondent under the **Insurance (Third Party Risks) Act** was to indemnify an insured up to the amount limited by the policy of insurance.

[32] It was submitted by Ms. Thompson that the actions commenced in the St. Catherine Parish Court were invalid, they having been commenced in the absence of the appointment of a personal representative in the Estate of Mr. Michael Melbourne. She submitted that the appropriate course for the applicants is to discontinue proceedings in the Parish Court and commence fresh proceedings on the appointment of personal representative in the estate.

### **SUBMISIONS ON BEHALF OF THE 2<sup>ND</sup> RESPONDENT**

[33] Ms. Bradford relied on the contents of the Affidavit sworn by her in the proceedings and further submitted that the role of an administrator ad litem was a serious one. In the matters which have given rise to these application, she referred to the fact that investigation of the allegations would be required and the claims defended, all of which

would require the administrator to raise monies. A like obligation would arise if judgment is entered against the estate in order to settle any amount found to be due.

**[34]** It was also submitted that the Administrator-General could not competently, fairly and without prejudice to the estate of the deceased conduct the defence of any actions by the applicants as a fiduciary, without the requisite funds. It was also her contention that the applicants had not presented any evidence to demonstrate that the office which she represents satisfied the criteria for appointment at CPR 21.7(2).

## **ISSUES**

**[35]** Having heard the submissions of Counsel for the parties, the following issues are regarded as dispositive of both applications.

1. Should the court exercise its discretion to permit the proposed amendment to the order numbered 3 on the applicants' Fixed Date Claim Forms?
2. Does the court have jurisdiction to appoint a representative party to defend proceedings initiated in the Parish Courts against the deceased Mr. Melbourne?
3. Is a personal injury action against the Estate of Michael Melbourne maintainable?
4. Can the appointment of an administrator ad litem validate the actions issued out of the St. Catherine Parish Court before such an appointment, thereby enabling them to be prosecuted by the applicants?

## APPLICABLE LAW AND ANALYSIS

### ISSUE 1: Should the court exercise its discretion to permit the proposed amendment to the order numbered 3 on the applicants' Fixed Date Claim Forms?

[36] The general rule, pursuant to CPR 11.6 (1) is that applications to the court must be in writing. Oral applications may be made if it is permitted by a rule or practice direction, or where the court dispenses with the requirement for an application to be made in writing, as prescribed by CPR 11.6 (2)(a) and (b) respectively.

[37] Where a party proposes to amend his case after a case management conference, or in the instant matters, the first hearings of the fixed date claim forms, the procedure is set out at CPR 20.4. It states:

20.4 (1) *An application for permission to amend a statement of case may be made at the case management conference.*

(2) *Statements of case may only be amended after a case management conference with the permission of the court.*

(3) *Where the court gives permission to amend a statement of case it may give directions as to -*

*(a) amendments to any other statement of case; and*

*(b) the service of any amended statement of case.*

[38] Additionally, save where the rules provide otherwise, the court may “*take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective*” in exercise of its general case management powers: CPR 26.1(2)(v).

[39] While there was no application by Counsel for the applicants to dispense with the general rule that applications are to be made in writing, she was permitted to propose the amendment sought.

[40] As stated earlier, the request was for an amendment to be made to the order numbered three (3) on each of the Fixed Date Claim Forms to delete the words “*that the Applicant has commenced in the Spanish Town Parish Court*”, and replace them with the words “*that the Applicant seeks against the said Michael Melbourne.*” If the amendments are allowed, order 3 would then read:

*Alternatively, such other person as this Honourable Court deems just be appointed as Administrator Ad Litem in the Estate of Michael Melbourne for the sole purpose of protecting the interest of the Estate of Michael Melbourne in respect of the personal injury claim **that the Applicant seeks against the said Michael Melbourne.*** [Emphasis supplied]

[41] The effect of the amendment would be that a relief against the respondents, which was not sought against them on the Fixed Date Claim Forms with which they were served, and to which they responded in their respective affidavits would now be available to the applicants. It would leave open to the court, the possibility of an order that either of the respondents be appointed administrator ad litem in respect of any personal injury claim that the applicants wished to pursue against the Estate of Mr. Michael Melbourne. The order would no longer be limited to the claims filed in the St. Catherine Parish Court. This would change in a significant way, the issues which are joined between the applicants and the respondents.

[42] As seen in the summary of the evidence led on behalf of the respondents and the recall of their submissions at the hearing, particularly that of the Administrator-General, it was tailored in large part to the relief being sought against it by the applicants on the Fixed Date Claim Forms as filed. That relief is that the respondent “*be appointed Administrator Ad Litem for the estate of Michael Melbourne **for the sole purpose of protecting the interest of the Estate of Michael Melbourne in respect of the personal***

***injury claim that the Applicant has commenced in the Spanish Town Parish Court<sup>2</sup>.***  
[Emphasis added]

[43] In the affidavit evidence filed on behalf of the Administrator General, it is contended that in the absence of a minority interest, she no longer has a statutory obligation or duty to apply for a grant of letters of administration in a deceased person's estate. In this regard, reliance was placed on the amendments to section 12 the **Administrator-General's Act** by virtue of the **Administrator-General's (Amendment) Act** of 2015.

[44] It is to be recalled that Mr. Melbourne died in 2012, some three years before the amendment referenced. In consequence, it appears to me that the 2<sup>nd</sup> Respondent is suggesting that the 2015 amendments are to act retrospectively in respect of Mr. Melbourne's estate so that an application by the Administrator-General for a grant of letters of administration would be discretionary. This point of law was not addressed in the submissions made on behalf of the applicants or any other party for that matter. That is hardly surprising given the limited scope of the relief sought by the applicants on their Fixed Date Claim Forms.

[45] To grant the proposed amendment would necessitate an adjournment of the hearing to enable the Administrator General and the other named parties to file further evidence and/or make submissions in these regards. Ms. Bradford's affidavits were filed on 17<sup>th</sup> January 2020, almost five months before the hearing of the applications. The affidavits disclosed that the 2<sup>nd</sup> Respondent designated the claims initiated in the parish court as void and of no effect on account of the absence of a personal representative. Five months was more than sufficient time within which to seek an amendment of the

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<sup>2</sup> In respect of the reference to "the Spanish Town Parish Court" I believe the applicants meant to say, the St. Catherine Parish Court holden in Spanish Town.

Fixed Date Claim Forms, but it was only at the very end of her submissions that Counsel for the applicants sought to make such an application.

**[46]** Having regard to the effect of the proposed amendment which is being sought very late in the proceedings, I am of the view that the overriding objectives of the CPR to deal justly with cases would not be served if the amendment were to be allowed. Accordingly, the request for amendment is refused. In consequence of that refusal, the issue of the jurisdiction of the court to make the orders sought by the applicants requires address.

**ISSUE 2: Does the court have jurisdiction to appoint a representative party to defend proceedings initiated in the Parish Courts against the deceased Mr. Melbourne?**

**[47]** It is convenient to begin by reproducing in full the provisions of CPR 21.7 and 21.8. They state:

*CPR 21.7 (1) Where in any proceedings it appears that a deceased person was interested in the proceedings then, if the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.*

*(2) A person may be appointed as a representative if that person -*

*(a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and*

*(b) has no interest adverse to that of the estate of the deceased person.*

*(3) The court may make such an order on or without an application.*

*(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.*

*(5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.*

*CPR 21.8 (1) Where a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.*

*(2) An order under this rule may be made on or without an application.*

**[48]** There is no doubt that this court has the jurisdiction to make an order to appoint a personal representative to defend a subsisting action in which a deceased is a party, or where he has an interest in the proceedings. The issue presented by the instant applications is whether this court is seized of jurisdiction in circumstances where the appointment of the representative party is with a view to continuing proceedings taken out in the Parish Court.

**[49]** Unless the reference to "the proceedings" in CPR 21.7 and 21.8 includes the very application for the appointment of a representative party, the language in both rules appears to suggest that "proceedings" to which the rules refer are those which are in train before the court in which the application is being made. The applications can be made on the ground that a deceased who is without a personal representative has an interest in the proceedings, in the case of CPR 21.7; or that a party to the proceedings has died in the case of CPR 21.8. It appears to me that the court's power under both rules is to enable proceedings which have been initiated in the court to continue.



**[50]** For its part, the **Judicature (Parish Courts) Act**, makes the following provisions as to parties:

*137. It shall be lawful for any infant above the age of fourteen years to prosecute any suit in a Court, for any sum of money which may be due to him for wages or work done, in the same manner as if he were of full age.*

*138. Subject to the foregoing provision, all provisions as to parties applicable to the Supreme Court shall apply equally to the Courts.*

**[51]** When the **Judicature (Parish Courts) Rules** were promulgated, the provisions of the **Civil Procedure Code (CPC)** relating to parties were expressly referenced in Order III of the Rules, and included as Annex D. Civil Procedure in the Supreme Court has moved on from the **CPC**, it having been repealed pursuant to section 2 of the **Judicature (Civil Procedure Code) Law (Repeal) Act 2003**. It has been replaced by the CPR 2002 which, subject to its own transitional provisions, came into effect on 1<sup>st</sup> January 2003.

**[52]** The legislature having seen fit to repeal the **CPC** and make way for its replacement by rules of court in the form of the CPR, it is my view that by operation of section 138 of the **Judicature (Parish Courts) Act**, the rules relating to parties under the CPR apply equally in the Parish Courts. If this conclusion is correct, the result is that where actions have been initiated in the Parish Courts, CPR 21.7 and 21.8 apply and the powers exercisable thereunder may be exercised by a judge of that court. Consequently, it is there that the application for the appointment of a representative party for the deceased's estate should be made in order to continue any action filed there.

**[53]** It is in the foregoing circumstances that I come to the view that this court does have the jurisdiction which the applicants have asked it to exercise. However, in the event that I am mistaken, I will address two other issues which arise on the applications which are capable of determining the applications.

**ISSUE 3: Is a personal injury action against the Estate of Michael Melbourne maintainable?**

**[54]** The survival of causes of action after the death of a deceased is regulated by the **Law Reform (Miscellaneous Provisions) Act (LRMPA)**. So far as is relevant to these proceedings, section 2 of the Act provides:

*(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:*

*Provided that this subsection shall not apply to causes of action for defamation.*

*(2) ...*

*(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either –*

*(a) proceedings against him in respect of that cause of action were pending at the date of his death; or*

*(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.*

**[55]** As to the import of these provisions, I need not go much further than to say that I agree with the assessment of Sykes, J (Ag), as he then was, in the case of **Dianna**

**Harriot.**<sup>3</sup> It was held that in respect of a deceased, the provisions oust the **Statute of Limitations of 1623, 21 James I.C. 16** which prescribes that a personal injury claim cannot be brought after the expiration of six (6) years from the date on which the cause of action arose.

**[56]** As a result of the foregoing statutory provisions, section 2(3)(b) in particular, an action on a tort is maintainable against the estate of a deceased provided that the cause of action arose no earlier than six (6) months before his death. In addition to that, proceedings must be taken in respect of the cause action no later than six (6) months after the personal representative of the deceased has taken out representation, however long the latter might take. Time does not begin to run against a plaintiff or claimant, as the case may be, until after representation has been take out.

**[57]** The applicants' evidence is that the alleged personal injuries they have suffered were caused by the motor car owned and operated by Michael Melbourne colliding into them on the 28<sup>th</sup> September 2012. It is also the evidence that Mr. Michael Melbourne died on that very day. By the applications which the court has been called upon to determine, it is advised that no personal representative has taken out representation following Mr. Melbourne's death. In these circumstances, the conclusion that a claim founded upon a tort currently subsists and is maintainable against the estate of Michael Melbourne is inescapable.

**ISSUE 4: Can the appointment of an administrator ad litem validate the actions issued out of the St. Catherine Parish Court before such an appointment, thereby enabling them to be prosecuted by the applicants?**

**[58]** It was the submission of counsel for both respondents that the actions initiated by the applicants in the St. Catherine Parish Court were invalid. In that regard, Ms.

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<sup>3</sup> Ibid. n.1

Thompson for the 1<sup>st</sup> Respondent contended that the claims there should be discontinued and refiled when a representative for the estate is appointed. For the 2<sup>nd</sup> Respondent, Ms. Bradford submitted that the actions were void ab initio and of no legal effect. Of the two submissions, I find the latter to be compelling.

**[59] In *The Administrator General for Jamaica (Administrator ad litem for the Estate of Walsh Anderson deceased) v Audley Matthews and Derrick Matthews***<sup>4</sup> K. Harrison, JA in remarking that the provisions of the **LRMPA** were quite clear said this of section 2(3)(b),

*“...[it] contains two elements: the first relating to the time when the cause of action arose, viz. it must have arisen not more than six months before the death of the tortfeasor; the second relating to the time when the action was started, viz, it must have started within six months **after** his personal representative took out representation.”* [Emphasis added]

**[60]** A person appointed by the court as a representative of a deceased for the purposes of litigation, is in no higher position than an administrator who derives authority through a grant of letters of administration: ***Delroy Officer v Corbeck White (In her capacity as representative of the Estate of Berthram White, deceased)***.<sup>5</sup> McDonald-Bishop, JA ahead of making that observation stated,

*[84] It is a general principle of law, and one that operates without exception, that an executor derives his title to sue as personal representative of the deceased from the will and not from the grant of probate. However, in order to prove his title to secure judgment, the executor has to obtain the grant of probate. On the other hand, it is also a general principle of law that operates without exception that an administrator derives his title to sue solely from the grant of letters administration. So, any*

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<sup>4</sup> (JMCA, 8 November 2006 – 39-40)

<sup>5</sup> [2016] JMCA Civ 45 [86]

*action brought on behalf of the estate of an intestate person requires the grant of letters of administration to be first obtained before proceedings are issued.*

*[85] Therefore, it is settled law that an administrator's right to bring proceedings runs from the date of the grant of the letters of administration and so proceedings issued before the date of the grant are invalid. See for instance **Chetty v Chetty** [1916] 1 AC 603 at 608, 609 and **Ingall v Moran** [1944] KB 160. In other words, the subsequent grant of the letters of administration cannot validate the action that was commenced before the grant.*

**[61]** In light of the parity between any person appointed to carry out proceedings on behalf of a deceased estate and an administrator who obtains his authority from a grant of letters of administration, the observations of McDonald-Bishop, JA which are reproduced above apply with like effect to the applicants' claims in the St. Catherine Parish Court. The proceedings having been issued after the death of Mr. Melbourne, in the absence of a personal representative of his estate, are invalid and of no effect. The invalidity cannot now be cured by the appointment of any person as administrator ad litem to continue those proceedings.

**[62]** In concluding as I have, an evaluation of the merits of the respondents' submissions on their fitness to be appointed administrator ad litem, or the appointment of any other person for that matter, has been rendered unnecessary.

## **CONCLUSIONS**

**[63]** For all the reasons stated, the applications for the appointment of an administrator ad litem to continue proceedings which were initiated in the St. Catherine Parish Court are refused.

**ORDERS**

**[64]** On Claim No. SU 2019 CV 00429:

1. The orders sought on the Fixed Date Claim Form are refused.
2. Costs to the Respondents.

**[65]** On Claim No. SU 2019 CV 01540:

1. The orders sought on the Fixed Date Claim Form are refused.
2. Costs to the Respondents.