[2025] JMSC Civ 01

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2018 HCV 01095

In the Estate of Kenneth Leighton Peart aka 'Fudgie', Businessman, late 6 Mont Calm Drive, Belgrade Heights, Kingston 19 in the parish of St Andrew, deceased

BETWEEN **KENNETH LEIGHTON PEART** **CLAIMANT/APPLICANT**
(Son of the deceased
Kenneth Leighton Peart aka 'Fudgie')

AND **NADINE CARLENE PEART** **1st DEFENDANT/RESPONDENT**
(Executrix of the Estate of
Kenneth Leighton Peart aka 'Fudgie')

AND **DONNA-KAYE ELENE SHARPE** **2nd DEFENDANT/RESPONDENT**
(Executrix of the Estate of
Kenneth Leighton Peart aka 'Fudgie')

IN CHAMBERS

Mr Lenroy Stewart instructed by Messrs. Wilkinson Law for the claimant

Mr Charles E. Piper KC instructed by Messrs. Charles E. Piper and Associates for the 1st defendant/respondent

Mr Philmore Scott instructed by Messrs. Philmore H Scott & Associates for the 2nd defendant/respondent

Heard: 6 December 2024 & 10 January 2025

Civil Procedure Rules – Part 68 – Application to remove administrator pendente lite and to appoint another administrator pendente lite – Judicature (Rules of Court)

(Master in Chambers) Rules 2021 – whether master in chambers has jurisdiction to consider the application – whether court has jurisdiction to set remuneration of administrator pendente lite

MASTER C THOMAS

Introduction

[1] By way of a further amended notice of application for court orders, which was filed on 10 October 2024, the claimant, Mr Kenneth Peart seeks the following orders: -

i. That Ms Paulette Earlington who was appointed administrator pendente lite by The Honourable Mrs Justice Lindo on the 18th day of December 2018 be removed as administrator pendente lite;
ii. That Ms Gillian Haughton, Communication Officer, of Townhouse 11 Mapleleaf Mews, Mapleleaf Avenue, Kingston 10, be appointed Administrator Pendente Lite until the determination of the proceedings filed by the Claimant;
iii. That this Honourable Court sets the remuneration of Fifteen Thousand Dollars ($15,000.00) per hour for the Administrator Pendente Lite appointed by this Honourable Court;
iv. Alternatively, the Court makes such other Orders as it deems fit regarding the Administrator Pendente Lite;
v. Costs of this application to the Claimant in any event; and
vi. Such further or other relief as this Honourable Court deems fit.

Background

[2] The substantive proceedings arise from the death of Mr Kenneth Leighton Peart aka ‘Fudgie’ (‘the deceased’) on 25 September 2017. The proceedings were commenced by the claimant, who is the son of the deceased, by fixed date claim form filed on 16 March 2018, in which the following orders are being sought: -

1. A Declaration that the purported Last Will and Testament of Kenneth Leighton Peart aka 'Fudgie', deceased dated the 17th day of July 2017 is void, invalid and of no effect as the deceased did not sign the Will in the presence of the attesting witnesses; nor was it signed by and with the deceased's direction as he was hospitalized in the United States of America on the date that it was purportedly signed and the attesting witnesses were not present in the United States;
2. That an Order pronouncing against the force and validity of the said alleged Will;
3. That a Declaration that the deceased Kenneth Leighton Peart aka 'Fudgie' died intestate;
4. That a Declaration that the Claimant, Kenneth Leighton Peart as the only child of the deceased is entitled to apply for a grant of Letters of Administration in the estate of Kenneth Leighton Peart aka 'Fudgie' deceased;
5. Liberty to apply;

[3] The claimant challenges the validity of the Last Will and Testament ('the Will') of the deceased on a number of bases, including but not limited to: -

i. That the deceased did not sign the Last Will and Testament in the presence of the attesting witnesses;
ii. That the document was not signed by and with the deceased's direction as he [the deceased] was hospitalized in the United States of America on the date that it was purportedly signed; and
iii. That the attesting witnesses were not present in the United States of America on the date of the purported signing of this document.

In light of these grounds, the claimant contends that the document alleged to be the Will of the deceased is void, invalid and of no effect.

[4] The 1st defendant, Ms Nadine Peart, was, at the time of the deceased's death, his wife and the claimant's step-mother. The 1st defendant's position as gleaned from her affidavit filed in opposition to the grant of the orders sought in the fixed date claim form is that on or around 15 July 2017, there was a 'get-together' at the home of the deceased. At the conclusion of this event, the document purported to be the Will of the deceased was signed in the presence of Mr Christopher Clayton, Ms Evette Johnson and Mr Neil St. Christopher Brooks.

[5] Although the 2nd defendant, Mrs Donna-Kaye Elene Sharpe (who is the sister of the deceased), is named an executrix of the Will of the deceased, her position is consistent with that of the claimant in that her affidavit evidence is that on 17 July 2017, the day the deceased purportedly signed the Will, he was admitted to hospital in the United States of America in relation to cancer treatment; and the two witnesses were in Jamaica on that date and could not therefore have witnessed his signature.

[6] The claimant on 21 November 2018 filed an application which sought a number of orders including the order with which this application is concerned. The order relevant to this application, which was for the appointment of Ms Paulette Earlington as administrator pendente lite until the determination of the proceedings, was granted by Lindo J on 18 December 2018. It was also ordered that Ms Earlington should provide an accounting verified by affidavit to any one of the registrars of the Supreme Court at quarterly intervals commencing April 2019 and until final determination of the claim. To date, no accounting has been filed, which spurred the filing of this application.

[7] The parties are in agreement that Ms Earlington ought to be removed and another competent person appointed until the substantive claim has been determined in

order to secure the estate. However, the parties diverge on how this is to be done and the person who is to be appointed as the new administrator pendente lite. As can be seen from the orders sought in the further amended application, the claimant has identified Ms Gillian Haughton as the proposed new administrator pendente lite and this has been agreed to by the 2nd defendant while the 1st defendant has identified Mr Kenneth Ferguson.

Submissions

[8] I will summarise what I regard as the salient aspects of the submissions of counsel for the parties. In doing so, although the application was filed by the claimant, I will first summarise the submissions of counsel for the 2nd defendant as he has raised the issue of the jurisdiction of the Master in Chambers ('the master') to consider this application, which if the court agrees with these submissions, would render it unnecessary to consider the substantive application.

[9] It was submitted by Mr Scott on behalf of the 2nd defendant that the law places restrictions on the power of the master as opposed to a judge of the Supreme Court. For this submission, reliance was placed on rule 2 of the Judicature (Rules of Court) (Master in Chambers) Rules 2021 ("the Masters in Chambers Rules"), which precludes the master from considering "proceedings where the decision of a judge in chambers is final and jurisdiction in respect of the proceedings is given, specifically, by enactment to a judge in chambers". He also referred to Practice Direction No 22 of 2021 Procedural Guidelines for the Probate and Family Divisions Supreme Court of Judicature of Jamaica. Mr Scott referred to rule 68.65(3) of the Civil Procedure Rules ('CPR') and submitted that an order appointing an administrator continues until probate is granted or pending the hearing of an appeal and is therefore final. Referring to **Kenneth Peart (Son of the deceased Kenneth Leighton Peart aka Fudgie) v Nadine Peart and Donna-Kaye Sharpe** [2021] JMSC Civ 58, a decision of Pettigrew-Collins J in the instant claim made on an application to set aside orders made previously by two other judges on separate occasions, he submitted that a judge of concurrent jurisdiction

of this court does not have the authority to set aside another judge's order, and a master is estopped from doing so. He indicated that while he was not opposed to the removal of Ms Earlington, the application should be placed back before Lindo J who made the order for the appointment of Ms Earlington.

[10] With respect to which of the two persons proposed should be appointed as the new administrator, Mr Scott argued that in order for Mr Ferguson to be appointed, a written application would have had to be made seeking such an order. Although the CPR permits the making of oral applications, the circumstances of this case do not allow for this to be done. He also submitted that in circumstances where there had been an incident occurring between Mr Ferguson and the deceased, the 2nd defendant would have great difficulty working or associating with him and it would be more appropriate to appoint Mrs Haughton who possesses the requisite qualifications and suitability for the appointment.

[11] On the jurisdictional issue, Mr Stewart submitted that the pertinent question was whether there is an enactment that gives jurisdiction to a judge in chambers to make the appointment and whether this is final. There was, he submitted, no enactment specifically stipulating that the appointment is to be made by a judge in chambers and although there are times when a decision made in chambers is final, the decision to appoint administrator pendente lite is not final and is one for which leave to appeal is necessary. He also submitted that the application need not go back before Lindo J because in circumstances where Lindo J had retired, it would have to be considered by another judge or court.

[12] In respect of the substantive application, Mr Stewart submitted that the substance of the application is not to throw out the order appointing the administrator pendente lite but instead for the removal of the person presently appointed and for someone else to be appointed. Therefore, the application is not to set aside Lindo J's order. Relying on rule 26.1(7) of the CPR, he submitted that implicit in the power to appoint an administrator pendente lite must also be the power of the court to remove that person so that the deceased's estate will not suffer. If that were not the case, he submitted, the court would be powerless to protect the estate and

would have to wait until the determination of the claim. The court as part of its power to control its processes must have some amount of control over the person it appointed, he argued.

[13] It was submitted that Ms Earlington had not commenced her duties with regard to the estate. This was due to various reasons she had given in an affidavit filed on her behalf on 23 February 2021. Mr Stewart submitted that since there has been inertia the removal of the current administrator pendente lite is necessary.

[14] It was submitted that Mrs Haughton should be appointed as the claimant is the only one who has an application before the court. Mrs Haughton has met all the criteria to be appointed and the estate is in need of independent supervision. Mr Stewart argued that in light of the assertions made by the 2nd defendant in relation to an incident between Mr Ferguson and the deceased, without deciding where the truth lies, it would not be appropriate to appoint Mr Ferguson.

[15] Mr Stewart also submitted that where the setting of the remuneration of the administrator is concerned, section 27 of the Judicature (Supreme Court) Act ('the Supreme Court Act') empowers the court to make such an order in that this was a power previously exercised by the High Court of Chancery in respect of receivers and administrators and by virtue of section 27, this court has all the powers previously exercised by the High Court of Chancery.

[16] On the jurisdictional issue, Mr Piper KC submitted that the law relating to the jurisdiction of the master is as set out in sections 9 and 10 of the Supreme Court Act and these sections give the master the same jurisdiction as is given to a judge. Mr Piper KC submitted that the order for the appointment of the administrator pendente lite is not a final order. The application is by its nature interlocutory; therefore the master has the jurisdiction to hear the application.

[17] Mr Piper KC also submitted that the application is not to remove the administrator pendente lite. It is an application to remove the existing one and replace her with

one of the two proposed persons. It is therefore an application to vary the order of Lindo J. Rule 26.1(7) of the CPR which gives power to the court to vary an order, for the reasons advanced by Mr Stewart, the removal of the person currently appointed ought to be within the power of the court in circumstances where she is not performing. In these circumstances, there is no practical reason a separate application for the appointment of Mr Ferguson is necessary, Mr Piper KC argued.

Discussion and Analysis

[18] The following issues arise: -

i. Whether the master has the jurisdiction to remove Ms Paulette Earlington as administrator pendente lite and appoint a new administrator pendente lite;
ii. Whether Ms Gillian Haughton or Fitzroy Ferguson should be appointed as administrator pendente lite until the determination of the substantive proceedings;
iii. Whether the court is empowered to set the remuneration and if so, what is an appropriate amount

Whether the master has the jurisdiction to remove Ms Paulette Earlington as administrator pendente lite and appoint a new administrator pendente lite

[19] The starting point in dealing with this issue is section 8 of the Supreme Court Act which sets out the jurisdiction of the master. It provides that “each Master shall exercise such authority and jurisdiction of a Judge in Chambers as shall be assigned to him by rules of court”. The import of the section is that the master is empowered to exercise the jurisdiction of a judge in chambers as provided by the relevant rules. Mr Scott referred to Masters in Chambers Rules which prescribe the circumstances in which a master may exercise the powers of a judge in chambers. Rule 2 provides:

> A Master in Chambers may transact all such business and exercise all such jurisdiction as may be transacted or exercised by a Judge of the Supreme Court in Chambers, except—
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> (a) appeals from the Lay Magistrates Courts;
>
> (b) applications—
>
> (i) for orders of mandamus, prohibition or certiorari;
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> (ii) for writs of habeas corpus;
>
> (iii) for leave to apply for judicial review;
>
> (iv) to determine the steps to be taken in fulfilment of an offer of amends under Part III of the Defamation Act;
>
> (c) proceedings where the decision of a Judge in Chambers is final and jurisdiction respect of the proceedings is given specifically, by an enactment, to a Judge in Chambers;
>
> (d) proceedings for attachment for contempt of court against a member of the legal profession acting in a professional capacity;
>
> (e) the review of taxation of costs.

[20] It is my view that the effect of these rules is that save for the proscription set out therein at paragraphs (a) – (e) of rule 2, the master is empowered to exercise the same jurisdiction as a judge in chambers. So, unless the instant application falls under one of the categories above, the master has jurisdiction to consider it. Mr Scott sought to rely on rule 2(c). That paragraph prohibits a master hearing a matter in respect of which the jurisdiction is given to a "judge in chambers" **and** the order is final. The paragraph is conjunctive and therefore both conditions must exist to preclude the master from considering the matter. The test for determining whether in civil proceedings an order is final or interlocutory is well-established in our courts as being the application test. Brooks JA in **John Ledgister and Others v Bank of Nova Scotia Jamaica Limited** [2014] JMCA

App 1 stated that "the court has accepted that, what is known as the 'application test', is the appropriate test for determining what constitutes a final decision in civil proceedings". He referred to the dictum of Lord Esher MR, in **Salaman v Warner and Others** [1891] 1 QB 734 as being an accurate explanation of the approach thus:

> "The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

[21] Applying that test, I am of the view that the order appointing an administrator pendente lite is interlocutory in nature in that whichever way it was determined, it would not have determined the dispute, and the matter would have continued, and in fact, has continued, in any event. In other words, the outcome of the application would not have and has not brought the claim to an end. The very fact that the order appointing the administrator pendente lite is limited until the determination of the proceedings, in my view, underscores that the order is not final. In addition, I agree with Mr Stewart that there is no stipulation in Part 68 of the CPR that applications under that Part must be heard by a judge in chambers. Therefore, as a master, I do have the jurisdiction to consider the application.

[22] I will now briefly address the submission of Mr Scott that the application is seeking to set aside the order of a judge of coordinate jurisdiction, that this is impermissible and that the application must be put back before Lindo J. In my view, it cannot be disputed that there are certain provisions of the CPR, which set out specific circumstances in which an order may be set aside: for example, rule 11.18, which

allows for the setting aside of orders made in the absence of a party; and rule 39.6 which empowers the court to set aside a judgment given in that party's absence. There is also rule 26.1(7) which allows for the varying and revoking of an order. In **Norman Harley v Doreen Harley** [2010] JMCA Civ 11, in considering the principles applicable to the court's exercise of its powers under rule 26.1 of the CPR, Harris JA stated:

> 39. By rule 26.1 (7) of the CPR the court is empowered to vary or revoke an order. The question which now emerges is under what conditions would a judge be entitled to revoke an order made by another judge exercising a parallel jurisdiction? The case of ***Mair v. Mitchell and Others*** *SCCA 123/08* delivered in February 2009, affords guidance as to the principles which the court ought to employ in dealing with an application under rule 26.1 (7). In that case Smith J.A., in considering the question as to the power of the court to vary an order under rule 26.1 (7), relied on the ratio decidendi as enunciated by Patten J, in **Lloyd's *Investment (Scandinavia) Limited v. Ager-Harrisen*** [2003] EWHC 1740. Patten J, in dealing with an application to vary an order under Part 3.1 (7) of the English CPR, at paragraph 11 said:
>
> > Although this is not to be an exhaustive definition of the circumstances in which the power under CPR Part 3.1 (7) is exercisable, **it seems to me that, for the High Court to revisit one of its earlier orders, the Applicant must either show some material change of circumstances or that the judge who made the earlier order was misled in some way, whether, innocently or otherwise, as to the correct factual position before him."**
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> 40. Smith J.A. in adopting the ratio pronounced by Patten J, said:

> "Although Patten J. was dealing with an application to vary the conditions attached to an order setting aside a default judgment and not one to vary a procedural regime, as in the instant case, I am of the view, that the reason for his decision represents a correct statement of the principle of law applicable to the exercise of the judge's discretion, under Rule 26.1(7) of the CPR. Indeed this principle was approved by the English Court of Appeal in ***Collier v Williams*** *(supra)*."
> [Emphasis supplied]

[23] In **Harley v Harley**, a claim had been brought by a wife against her husband claiming an interest in several properties. During the course of proceedings, a judge had made an order for the husband to pay a certain sum into court and another judge had imposed an unless order to enforce compliance with that order. An application was made to revoke these two orders. The application was refused and the husband appealed. Harris JA concluded her consideration of the applicable principles stating:

> 41. It is patently clear that rule 26.1 (7) restricts the conditions under which a court may vary or revoke an order. **The rule does not provide an open door permitting a court to reverse its decision merely because a party wishes the court so to do. A court therefore, will only revisit an order previously made if an applicant, seeking to revoke that order, shows some change of circumstances or demonstrates that a judge who made an earlier order had been misled.** Has the appellant shown that either of these two factors would enure to his benefit?

[24] More recently in **Leslie DaCosta Williams v Teleith Evelyn Williams** [2022] JMCA Civ 30, the court in considering the applicable principles in the context of a consent order, stated:

> iii) Where a court makes an order in the exercise of its own discretion, that order may only be varied or set aside by a judge of coordinate jurisdiction if the judge who made it was misled, material and relevant facts were not disclosed or where there has been a material change of circumstances since the order was made: **Mair v Mitchell; Harley v Harley; Lloyds Investments Limited v Christen Ager –Hanssen** and the line of cases on which they rely.

[25] It seems to me that there is no unfettered power which resides in a judge who makes an order to vary or revoke his order. The principles apply regardless of the constitution of the court, that is whether the application is being considered by the judge who made the previous order or by a judge of coordinate jurisdiction. In my view, what would preclude the court granting the orders sought is not whether the application is being considered by a judge other than the judge who made the order, but instead whether the facts of this case satisfy the relevant principles applicable to the circumstances in which an order can be varied or revoked.

[26] Having found that the court as presently constituted has the jurisdiction to consider and grant the application, it is now necessary to determine whether in the circumstances of this case, it is appropriate to grant the order removing the current administrator pendente lite.

[27] Rule 68.31 of the CPR under the heading “Limited Grants” contains the provisions for the appointment of administrator pendente lite. It is contained in those provisions of Part 68 that concern non-contentious probate proceedings. It provides as follows:

> (1) Any limited grant must state clearly the limitation imposed on that grant.

(2) An application to appoint an administrator pendente lite may be made to the court in circumstances where there are pending proceedings affecting the estate and an unlimited grant of administration cannot be issued until the said proceedings have been determined.

(3) An application to appoint an administrator pendente lite may be made by any party interested in the estate including a beneficiary, creditor or executor.

(4) An application to appoint an administrator pendente lite must state the name and address of the proposed administrator, who must be unconnected with the estate or the pending proceedings, and is to be supported by the following:

(a) an affidavit setting out the full particulars of the deceased's estate, details of the pending proceedings and the reason for the application;

(b) an affidavit by the proposed administrator setting out his qualification, willingness to act as administrator pendente lite and an oath to the court that he will collect and preserve the assets of the estate, administer the estate according to law and render a just and true account of his administration whenever required by law to do so, and

(c) an affidavit by an individual unconnected with the estate or the pending proceedings swearing to the integrity of the proposed administrator and setting out the proposed administrator's suitability for the appointment.

(5) …

[28] It is clear that there is no provision in this rule in relation to how the administrator pendente lite is to carry out his duties or providing recourse to a party who has some disquiet about the manner in which the administrator carries out his duties or any incidental matters arising. However, it is equally clear that the instant

proceedings are contentious probate proceedings as the claimant is challenging the validity of the Will of his deceased father, while the 1st defendant's position is that the Will was validly made. Therefore, I am of the view that rule 68.65 of the CPR, which was relied on by Mr Scott which allows for an order for a grant pending administration to be made in contentious proceedings is relevant. It states:

> (1) Any party may apply for an order for the grant of administration pending the determination of probate proceedings.
>
> (2) If an order is made under paragraph (1) –
>
> (a) Part 51 applies as if the administrator were a receiver appointed by the court; and
>
> (b) where the court allows the administrator remuneration under rule 51.5, it may make an order that such remuneration be paid out of the estate.
>
> (c) An appointment as administrator under this rule ceases when a final order is made in the probate proceedings but may be continued by the court pending the hearing of any appeal.
>
> (d) Wherever practicable any application under this rule should be made at the first hearing of the claim.

I am of the view that because the appointment of Mrs Earlington was made in contentious probate proceedings, the general provisions of rule 68.65 of the CPR, which, in my view, may encompass any limited grant made in contentious proceedings pending the determination of the proceedings, are applicable. It follows from this that by virtue of rule 68.65(2)(a), Part 51 of the CPR applies to the circumstances of this case.

[29] Rule 51.10 of the CPR empowers the court to make orders where the administrator fails to perform his functions. It provides:

(1) This rule applies if the receiver-

(a) fails to submit an account by the date ordered;

(b) fails to attend for the passing of any account; or

(c) fails to pay into court or as directed any balance shown on the account as due from him or her.

(2) The applicant must ask the registry to fix a hearing for the receiver to show cause for the receiver's failure.

(3) The registry must issue a notice stating the date, time and place of the hearing to show cause.

(4) The applicant must serve the notice on the receiver not less than 7 days before the hearing.

(5) At the hearing the court may –

(a) give directions to remedy the default; or

(b) give directions for the discharge of the receiver;

(c) appoint another receiver;

(d) disallow any remuneration claimed by the receiver; and

(e) order the receiver to –

(i) pay the costs of the applicant; and

(ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

[30] It can be seen that these rules contain detailed provisions which give recourse to parties affected by the failure of a receiver/administrator to perform his/her duties. These detailed provisions also set out a specific procedure to be employed in those circumstances, which in my view, demonstrate a recognition of the important principle that the receiver/ administrator should be given an opportunity to be heard if there is any complaint made about him/her in relation to a failure to carry out his/her duties. This procedure was not followed in this case. It is my view that the failure to follow the procedure is fatal to the

application especially since there was no service of the actual hearing date on Ms Earlington or the attorneys on record for her.

[31] Mr Piper KC and Mr Stewart have submitted that the application ought to be considered against the background that an administrator pendente lite is subject to the control of the court. However, no authority was cited for this proposition and my research has revealed that this is usually based on the existence of a statutory framework.

[32] In that regard, the cases from England demonstrate that there have been statutory provisions governing the appointment of the administrator pendente lite from as far back as the 17th century. For example, from as early as 1857, in England sections 70 and 71 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), which created the Probate Court, contained the following provisions:

> Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.
>
> It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and

profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct.

[33] Those provisions were repealed by the [Senior Courts Act 1981] (1981 c 54), which is currently in force, section 117 of which states:

> **117 Administration pending suit**
>
> (1) Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the High Court may grant administration of the estate of the deceased person in question to an administrator pending suit, who shall, subject to subsection (2), have all the rights, duties and powers of a general administrator.
>
> (2) An administrator pending suit shall be subject to the immediate control of the court and act under its direction; and, except in such circumstances as may be prescribed, no distribution of the estate, or any part of the estate, of the deceased person in question shall be made by such an administrator without the leave of the court.
>
> (3) The court may, out of the estate of the deceased, assign an administrator pending suit such reasonable remuneration as it thinks fit.

[34] In the Commonwealth Caribbean, there are jurisdictions which have statutory provisions which deal with the appointment of administrator pendente lite. For example in Trinidad and Tobago section 17 of the Wills and Probate Act provides:

> 17. (1) Where any legal proceedings touching the validity of the Will of a deceased person, or for obtaining, recalling, or revoking any grant, are pending, the Court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a

> general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the Court and act under its direction.
>
> (2) The Court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the Court thinks fit.

[35] I am therefore of the view that the principles applicable to the instant application are those contained in the CPR, which I have set out above.

[36] Although an order removing Ms Earlington, as administrator pendente lite may not be made for the reason I have indicated at paragraph 30 of this judgment, I bear in mind that there is no dispute that the deceased's estate is a sizable one which is in need of supervision or monitoring. I also bear in mind that part of the reason for Ms Earlington's failure to carry out her duties was that there was some disagreement as to her remuneration as the court had not previously made any order in that regard. In light of this and the fact that paragraph 4 of the application has sought as an alternative that the court makes "such other orders as it deems fit regarding the Administrator Pendente Lite", I am of the view that an appropriate order in the circumstances is an order setting her remuneration. Having regard to the fact that the two prospective administrators (Ms Haughton and Ferguson) have proposed remuneration in the range of $6,000.00 and $15,000.00, I am of the view that an appropriate sum would be the average of the two sums, that is, $10,500.00.

[37] I therefore order as follows:

(i) Paragraphs 1 and 2 of the application seeking orders for the removal of Ms Paulette Earlington as administrator pendente lite and for Mrs Gillian Haughton to be appointed as administrator pendente lite is refused.

(ii) The current administrator pendente lite, Ms Paulette Earlington is to be a paid a remuneration of $10,500.00 per hour from the deceased's estate.

(iii) Costs of the application to be paid out of the estate of the deceased Kenneth Leighton Peart.

(iv) Claimant's attorneys-at law are to file this order and serve it on all the other parties as well as Ms Paulette Earlington and the attorneys-at-law on record for her.