



[2012] JMSC Civ 104

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2008 HCV 03839

BETWEEN	THE CHURCH OF JESUS CHRIST OF JAMAICA HEALING MISSION LIMITED	CLAIMANT
AND	THE CHURCH OF JESUS CHRIST MINISTRY LIMITED	1 <sup>ST</sup> DEFENDANT
AND	ELIZABETH COLE	2 <sup>ND</sup> DEFENDANT
AND	CORDELIN MAXINE COLE	3 <sup>RD</sup> DEFENDANT
AND	GRACE ANN COLE-ROWE	4 <sup>TH</sup> DEFENDANT

Dundeen Ferguson instructed by D.N. Ferguson & Associates for the Claimant

Anthony Williams instructed by Usim Williams & Company for the Defendants

## **Oral Judgment**

### ***Civil Procedure Rules – 19 (3) (2) Addition of Party***

**Heard: June 5, 15 and 29, 2012**

**Campbell, QC, J**

[1] On the 5<sup>th</sup> August 2008, the Claimant's action, *inter alia*:

*A declaration that the properties at 35 West Avenue,  
Kingston 13 is owned by the Claimant, and that*

*Sylvester Cole, deceased, and a late Bishop of the Claimant, in whom is vested legal interest in 35 West Avenue, holds the property in trust for the Claimant Church. The Claimant obtained injunctions restraining the Defendants from interfering in the operations of the church until the matter was finally determined.*

[2] The Claimant seeks Orders to add the Estate of the late Bishop as Defendant to the suit and consequential orders. They further asked that the trial of the matter be stayed pending the determination of Claim No. 2008 HVC 01245, **Re Sylvester Cole**, deceased. The Defendants filed on the 8<sup>th</sup> March 2012, a Notice seeking that the Claimant's case be struck out.

[3] The central issue, concerns the ownership of the premises 35 West Avenue, Kingston 13, the Claimant is contending that it's the church monies that the late Bishop used to construct the property therefore holds the property in trust for the Claimant. The Defendants deny the Claimant's contention and say that the Claimant is unable to prove such a trust, because there is no contemporaneous evidence as required by law, that at the time the property was acquired in 1952, that it was to be held in trust for the Church (**See Shephard v Carthwright, 1955 AC431**). The Defendants further argue that the Defendants are not the lawful executors or administrators of the late Bishop Cole.

[4] The Defendants are joined not because they represent the Estate of the late Sylvester Cole, but because they interfered with the operations of the Claimant's church. That I understand was the basis on which the injunctive relief was granted. Rule 19, allows the court to make orders in respect of adding or substituting parties in any claim. Rule 19 (3) (2) permits the Claimant to apply to add a Defendant to the claim. Rule 19 (2) (3) outlines the circumstances in which the court may add a new party to proceedings; *inter alia* (1) if it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings. The court recognizes that justice will best be achieved and the court's resources more efficiently applied when all the parties are before the court and are therefore bound by the decision of the court. Allowing the claimant, to add the Estate of the late Bishop Cole, will allow the court at trial, the ability to resolve the issue of the ownership of 35 West Avenue. I would grant the application on that ground. I would be minded to stay execution of the trial of these

matters pending the outcome of Claim No. 2008 HCV 01245 that will facilitate the orderly disposal of the matter.

[5] This court, on the same facts, having previously granted an injunction to restrain the Defendants undercuts the Defendants' argument that the claim was frivolous and vexatious. The court must have found that there was a serious question to be tried before such a grant was made. The application to strike out the Claimant's case is dismissed.