

JUDGEMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

CLAIM NO. F. D. 1998/W-003

BETWEEN

VIOLET WOLFE

APPLICANT/RESPONDENT

AND

SIMONE WOLFE
(Personal Representative of Estate
RAPHAEL WOLFE, deceased, testate)

RESPONDENT

DELIVERED BY MR. JUSTICE REID

ON THE 26TH DAY OF SEPTEMBER, 2003

The Applicant was married to Raphael Wolfe and lived together in the State of Florida. Mr. Wolfe died in 2002.

Violet Wolfe now brings an action against the personal representative of Raphael Wolfe seeking to declare the proceedings were null and void.

Mr. Wolfe has since died and had re-married to Simone Wolfe the personal representative of the estate.

Simone Wolfe has filed an affidavit and further affidavit.

The parties were married on the 28th of February 1973 and cohabited until the 14th April 1998.

In September of last year Simone Wolfe made an application for probate of the will of Raphael Wolfe. He was a sergeant in the Broward Sheriff's office.

Raphael Wolfe filed a petition on the 8th of January 1998 and was granted a decree nisi on the 20th October 1998 and a decree absolute on the 18th of December 1998.

In his petition he says that the parties separated in or about May 1996. The Applicant says that they resided together until the 14th April 1998 when she moved to a less expensive apartment. She exhibits a note in the handwriting of the deceased and which is not challenged as the ground for her statement that they lived together up to the 14th April 1998.

In July 1999 a petition for dissolution of marriage in 17th Judicial was filed in the 17th Judicial Court by the Applicant in which she recited that they cohabited up to the 14th April 1998. In his Answer the respondent admits the allegations in paragraphs 1,2,3,4,5, 6 and 11 and added that the parties were already divorced. Admitting as he does the allegations he would have admitted that they were cohabiting up to the 14th April 1998. The petition speaks to separation from May 1996, fifteen months before the petition. The two could not be true.

The Applicant was not served with the petition by which the marriage was dissolved in Jamaica.

These are proceedings to declare that the order granted in 1998 be set aside and the decree absolute set aside for fraud, irregularity and perjury.

Although there is strong evidence to support the Applicant's contention the problem is that he has died. The personal representative is unable to make a response or to controvert the contention of the Applicant.

The Applicant says that the proceedings abroad are put on hold because of the state of things as the respondent says he is divorced already.

The Court is asked to set aside these proceedings. But there are vested interests and rights following on proceedings in the Jamaican Court.

Mr. Heywood says that the proceedings are a nullity because the evidence shows that the parties were not living separate and apart and the Applicant was not served with the petition and that the decree nisi should be set aside *ex debito justitiae*.

Mr. Williams contends otherwise and says that the order must be based on equitable principles and that the Applicant has not shown sufficient reason for her inactivity since filing of Answer up to a period beyond his life.

She did not know when he would die. She said she made inquiries of the attorney for her husband and received advice that it was already done and could not be undone. She said she consulted an attorney to put through her divorce and has been questioning the status of her marriage. It is unfortunate that she did not pursue as she had the means of doing so.

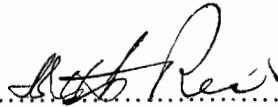
I agree with Mr. Williams that it would not be just and equitable after long lapse of time to disturb those proceedings notwithstanding the strong evidence to support the Applicant's contention that she was not served. Notwithstanding that it is quite equitable to declare that the proceedings here are voidable. Because of the intervening death and long period of inactivity it would not be a just thing to allow this proceedings to be set aside.

In the circumstances the declaration sought is refused. There only remains the question of costs.

Cost for respondent to be paid out of the estate of Raphael Wolfe.

Leave to appeal granted.

Order for amount of \$150,000.00 security for costs standing in Certificate of Deposit No. 105682 to be paid to Attorney-at-Law for Applicant, Lawton C. Heywood.


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JUDGE