



[2022] JMSC Civ 245

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2020CV00072**

<b>BETWEEN</b>	<b>LELIETH WATTS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>SYDNIA MATHESON</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Mrs. Georjean Edwards-Fullerton, Attorney-at-Law for the Claimant instructed by Deacon and Associates, Attorneys-at-Law.

Mr. Robert Collie, Attorney-at-Law for the Defendant instructed by Collie Law Attorneys-at-Law.

**Heard:** September 22, 2022 and October 04, 2022

**Civil Procedure- Application to strike out Claimant's statement of case- Rule 26.3 (1)- Whether there are reasonable grounds for bringing the claim- Abuse of the process of the court- Whether there are reasonable grounds for bringing or defending the claim- Res judicata- Non-compliance with court order.**

**P. MASON J (Ag.)**

**THE APPLICATION**

**[1]** A Notice of Application for Court Orders to Strike Out Claim was filed by the Defendant on November 18, 2021. In this Application the Defendant is seeking the following orders:

*"1. That the court exercises its discretion and strike out the statement of case of the Claimant.*

*2. That judgment be entered against the Claimant pursuant to the striking out of case.*

3. *That judgment be entered in favour of the Defendant herein.*
4. *Costs to the Defendant.*
5. *Such further, and/or other relief as this Honourable Court deems just."*

**[2]** The grounds on which the Applicant is seeking the orders are as follows:

- "1. Pursuant to Rule 26.3 (1) (b), the Court has the power to strike out a statement of case if it appears to the court that the statement of case is an abuse of the process of the court.*
- 2. That the issues which arise in the present proceedings are res judicata based on the judgment of Mangatal J, in the case of Leslie Augustus Watts v. Lelieth Watts and Watts Investment Limited [2013] JMCC Comm. 15.*
- 3. Further, that the claim be struck out as the Claimant has failed to file an Affidavit in response to the Defendant's allegations of Fraud relevant to her birth certificate.*
- 4. That based on the foregoing the Claimant has no real prospect of successfully bringing the claim.*
- 5. It is in the interest of the overriding objective that the orders sought herein be granted."*

**[3]** The Defendant also filed an "Affidavit of Robert Collie in Support of the Application to Strike Out Defence" on November 18, 2021. This Affidavit was titled in error as it was sworn by Sydnia Matheson. Her evidence is that she is the niece of the deceased and that there have been matters related to the deceased before the court from 2012. She says that the court tried the issues on July 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup> and on October 31<sup>st</sup>, 2013, and found that the deceased did not have the capacity to make any decisions related to his business affairs after 2010. Therefore, the Defendant/Applicant is purporting that the Will provided by the Claimant is fraudulent, null and void. She is also claiming that the birth certificate presented by the Claimant has been amended as the Defendant/Applicant's uncle's name was added on February 10, 2011. That would have been almost a year after the deceased was declared as not having capacity to execute legal documents. It is on this basis that the Defendant is claiming that any issues that come before the court in relation to her uncle signing any document would be deemed as res judicata.

[4] The Defendant in her evidence states that on March 3rd, 2021, Lawrence- Grainger J ordered the Claimant to file an Affidavit in Response by March 18, 2021. The Defendant/Applicant is of the view that the Claimant's failure, neglect, or refusal to comply is an abuse of the court's processes.

## **BACKGROUND TO THE APPLICATION**

[5] This Claim was initiated by way of Fixed Date Claim Form filed by the Claimant, Lelieth Watts, on January 10, 2020. She seeks a declaration that she is the sole beneficiary of the residuary estate under the will of Leslie Augustus Watts, dated June 24, 1965. She also claims that she is the proper person to apply for the Letters of Administration with Will Annexed given that she is the deceased's only child or that in the alternative the Administrator General be appointed. The Claimant is also requesting that Leslie Augustus Watts' Will dated the 24th of June 1965 be handed over to her. She is also seeking to be appointed Administrator Ad Litem to defend any claims being brought against her father's estate as well as any other relief the court deems just.

[6] This was supported by an Affidavit in Support of Fixed Date Claim Form which was also filed on January 10, 2020, where she exhibited numerous documents as evidence to support her claim. These documents include her birth certificate, a copy of the Will dated the 24th of June 1965 and Mr. Leslie Augustus Watts' death certificate.

[7] The hearing of the substantive matter on the Fixed Date Claim Form has been set for October 4, 2022.

## **DEFENDANT/APPLICANT'S SUBMISSIONS**

[8] The Defendant/Applicant made the application to strike out the Claimant's statement of case on the basis that it has no real prospect of success and is an abuse of process. This is on the basis that the Claimant failed to comply with an order of the court, as well as a claim of res judicata for some of the issues raised by the Claimant. To support her application, Counsel for the Defendant/Applicant referred to Rule 26.3 (1), (2) of the Civil Procedure Rules ("CPR") to support his argument that the court should strike out the Claimant's claim. He also referred to paragraph 40 of **Clarke-Morales v Sunswept Jamaica Company Ltd** [2021] JMSC Civ 105 which referenced ***Gilham v Browning*** [1988] 1 WLR 682 at page 689. Paragraph 40 states:

*"It is of course important to recognise on the one hand that the court uses a jurisdiction to strike out for abuse sparingly and in plain cases where there has been misuse of the court's process, and on the other*

*that the court is not constrained by fixed categories of circumstances in which the court has this power."*

[9] He mentioned the case of **Ken Sales & Marketing Ltd v Earl Levy et al** [2012] JMSC Civ 29, to emphasize that res judicata is founded upon two principles. The first is that there should be an end to the litigation [public policy] and the second is that justice demands that the same party shall not be harassed twice for the same cause [private justice].

[10] In relation to the issue of non-compliance with court order, counsel referred to **McNaughty v Wright** (2005) Court of Appeal, Jamaica Civ Appeal No 20/2005 (unreported). In this case counsel found what Smith JA said to be applicable in the case at bar. Smith JA said:

*"no court should be astute to find excuses for such failure... obedience to the orders of the court and compliance with the rules of the court are the foundations for achieving the overriding objective of enabling the court to deal with cases justly."*

[11] Counsel admitted that while he understood that the effect of striking out the Claimant's case is to bring the litigation to a conclusion which may deny justice, striking out the Claimant's statement of case would be in keeping with the overriding objective of the CPR as the delays on the part of the Claimant in filing the affidavits show clear disregard for the order of the court. His submission is that to accept these affidavits would likely obstruct the just disposal of the proceedings and would disregard the overriding objective.

[12] **Leslie Augustus Watts v Lelieth Watts and Watts Investments Limited** [2013] JMCC Comm. 15 was used to emphasize the issue of res judicata. This is on the basis that the case at bar had similar issues dealt with in the abovementioned case. Counsel purports that the case at bar turns on whether the Claimant is indeed the daughter of the deceased, which he says the court already made a decision on when it was held that the deceased did not have the mental capacity to make certain decisions related to his affairs after March 2010. It is on this basis that counsel is submitting that the addition of the deceased's name to the Claimant's that birth certificate cannot stand as evidence and that portion of the Claimant's claim should be struck out. In addition, he also highlighted the fact that the Claimant did not produce a Declaration of Paternity and the affidavit of Reginald C Chantrielle should not suffice.

[13] In closing, counsel emphasized that the Claimant will not be deprived of the right to trial on the basis that she has not disclosed any issues or reasonable grounds to be dealt with at the trial. Therefore, it is in the interest of justice to strike out the Claimant's case and enter judgment accordingly against the Claimant and in favour of the Defendant.

#### **CLAIMANT/RESPONDENT'S SUBMISSIONS**

[14] Counsel for the Claimant/Respondent identified two issues to be resolved in this application. The first is whether the Claimant, being the daughter of the deceased has a real prospect of succeeding in the substantive claim in which she seeks a declaration that she is the sole beneficiary of the residuary estate of her deceased father, Leslie Augustus Watts. On this issue, counsel referred to section 8 of the **Status of Children's Act** which indicates that a birth certificate on which the father's name is endorsed is prima face evidence that paternity has been established.

[15] In the case at bar the Claimant/Respondent provided her birth certificate with the deceased's name endorsed on it to satisfy the court that the deceased is her father. Counsel also referred to the Medical Report from Dr. John A. S. Hall who indicated that prior to Mr Watt's passing that he examined him on several occasions between 2010 and 2015 and in his estimation Mr. Watts was mentally clear and alert.

[16] Counsel also referred to section 10 of the **Status of Children's Act** to emphasize that the court may make a declaration of paternity after either the father or child dies by way of affidavit evidence from persons who can speak to the existence of a father and child relationship prior to the death of the father.

[17] Counsel also referred to numerous authorities to support her arguments. **Helen-Parchment (Administratrix, estate Headley Weston) v Pete Weston** [2016] JMSC Civ 106 (para 82) was used to emphasize that "*striking out was limited to plain and obvious cases where there was no point in having a trial*". The case at bar does not fall within such a category so it should not be struck out. She also referred to **S & T Distributors Limited and S & T Limited v CIBC Jamaica Limited and Royal and Sun Alliance**, SCCA 112/2004 to support her argument that the Claimant's statement of case should not be struck out.

[18] The case of ***Leslie A Watts v Lelieth Watts and Watts Investment Ltd.*** (*supra*) was referred to as counsel thought it strange that in this case Mangatal J. at paragraph 4

referred to the Claimant as "*the daughter and only child of Mr. Watts*" yet no issues were raised to dispute the Claimant/Respondent's status. Furthermore, the Claimant/Respondent was named as the informant on her father's death certificate and submitted funeral receipts that were in her name.

**[19]** Counsel also emphasized that the application to strike out the Claimant's case was made because the Claimant had not filed an affidavit in response to the Defendant's affidavit within the stipulated time which was March 18, 2021. However, the court rectified it by giving the Claimant additional time to file the affidavit in response. As a result, counsel submits that the Claimant/Respondent does have a real prospect of succeeding in the substantive claim and thus the statement of case should not be struck out.

**[20]** The second issue is whether the Claimant being declared the daughter of the deceased is *res judicata*. In response to this, counsel submits that the issue of the Claimant/Respondent's status was never a live issue in the previous matters before the court and so should not be classified as *res judicata*. She also emphasized that the issue of the appointment of the Claimant/Applicant as the Administrator of the estate or in the alternative, the Administrator General of Jamaica was never brought before the court hence, these issues cannot be said to be *res judicata*.

**[21]** In closing, counsel submits that the Claimant/Respondent does in fact have reasonable grounds for bringing the claim and has a real prospect of success and to strike out the Claimant's statement of case would not be in line with the overriding objective of the CPR.

## **ISSUES**

- I. Whether the Claimant's claim should be struck out for not having a real prospect of success in the substantive claim, in which she is seeking a declaration that she is the sole beneficiary of the residuary estate of her deceased father, Leslie Augustus Watts.
- II. Whether the Claimant's claim of seeking a declaration to be declared the daughter and sole beneficiary of the residuary estate of her deceased father is *res judicata*.

## THE LAW AND ANALYSIS

**ISSUE I- Whether the Claimant's claim should be struck out for not having a real prospect of success in the substantive claim, in which she is seeking a declaration that she is the sole beneficiary of the residuary estate of her deceased father Leslie Augustus Watts.**

[22] Rule 26. 3 (1) of the CPR gives the court the power to strike out a statement of case under certain circumstances. Rule 26. 3 (1) provides:

*In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court-*

- (a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;*
- (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*
- (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim, or*
- (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.*

[23] CPR r. 26. 3 (1) makes it clear that the court has to consider if any of the circumstance outlined in the section are present before striking out a claim. In the case at bar the Defendant/Applicant submits that the Claimant/Respondent does not have a real prospect of success and that the claim is an abuse of process and that she has failed to comply with an Order of the court. The Defendant/Applicant claims that the Claimant/Respondent falls within three (3) of the categories outlined in r. 26. 3 (1). However, I have considered the evidence before the court, and I do not agree. While the Claimant/Respondent failed to comply with an order of the court that was made on March 3<sup>rd</sup>, 2021, by Lawrence-Grainger J to file an affidavit in response to the Defendant's Affidavit, the Claimant/Respondent was, however, allowed by an order of Tie-Powell, J on the 24<sup>th</sup> of November 2021 to file the affidavits on or before November 26, 2021. The Claimant/Respondent complied with this order by filing the affidavits on November 26, 2021. Therefore, this would no longer be a reason for this court to consider striking out the Claimant/Respondent's statement of case.

[24] Black's Law Dictionary, 2nd Edition defines "abuse of process" as "Legal action that is regarded by the courts as misuse or even abuse of the legal process." Based on this definition, I have to consider whether the Claimant/Respondent's claim is in fact a misuse of the court resources and or is an abuse of the legal process. To do this, I refer

to **Leslie A. Watts v Lelieth Watts and Watts Investment Ltd.** (*supra*). This case dealt with allegations that certain transactions were procured by undue influence by Ms Watts (the Claimant/Respondent herein) over her elderly father and/or that these transactions were intrinsically inequitable and unconscionable. The issues arising in the case at bar are very different from the issues in the aforementioned case. In the case at bar, the Claimant/Respondent's Claim for a declaration that she be the sole beneficiary of the residuary estate of her deceased father, Leslie Augustus Watts. She is seeking an entirely different remedy under different circumstances which gives rise to different issues. Therefore, I do not find her claim to fall under Rule 26. 3 (1) (b), thus it is not an abuse of the court's process as it does not constitute a misuse of the court's resources nor is it an abuse of the legal process.

[25] On the point of determining whether the statement of case contains reasonable grounds for bringing or defending a claim the case of **S & T Distributors Limited and S and T Limited v CIBC Jamaica Limited and Royal and Sun Alliance** (*supra*) is applicable. At page 29, Harris J.A. referred to **Drummond-Jackson v British Medical Association and Others** [1970] 1 WLR 688 where Lord Pearson at page 695 said:

*"Over a long period of years, it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases."*

[26] On page 29, Harris J.A. also referred to **Nagle v Feilden & Others** [1966] 2 QB 633 where Dankwerts L.J. at paragraph 648 said:

*"The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the court."*

[27] The case of **Helen Weston-Parchment (Administratrix, estate Headley Weston) v Pete Weston** [2016] JMSC Civ 106 makes it clear that striking out should be a last resort. At paragraph [69] Anderson, J said that:

*"The court does not countenance delay and disobedience of its rules, orders and/ or directions, but striking out is and should always be, a last resort."*



[28] Anderson, J at paragraph [42] referred to the case of **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ 21, which provides that:

*"42. In **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ 21, McDonald Bishop J.A. (Ag.) further stated at para. 50 that: The authorities have equal made I clear that striking out or dismissing a party's case is a draconian or extreme measure and so it should be regarded as a sanction of last resort."*

[29] **Helen Weston-Parchment** (supra) emphasizes the principle that the sanction of striking out ought to be employed only in cases of "*blatant and/ or wholesale disregard for rules and/ or orders of the court.*"

[30] Upon the authority of the above-mentioned cases, it is clear that the sanction of striking out should only be allowed when the disregard for the rules of the court are so blatant and when there is no other option. This is so because striking out has the severe effect of preventing a party from accessing justice.

[31] Therefore, in determining whether to strike out the Claimant/Respondent's claim, I have to ensure that I carefully balance the actions of the parties against the interest of justice all the while keeping the overriding objective of the CPR in mind. I have considered the evidence before the court and the submissions of the parties involved and while the Claimant/Respondent did not comply with the first order to file her Affidavit in Response to the Defendant, she received an extension of time to be compliant. If she was allowed an extension to file in the interest of justice, it would be unjust to strike out her statement of case on that basis or any at all as I believe that there are issues that need to be resolved at the hearing of the substantive matter.

[32] The court finds the authorities used by the Claimant/Respondent on this point to be more applicable to the case at bar. I also find Mrs Edwards- Fullerton's submissions to be cogent and agree with her reasoning and application of the relevant authorities to the case at bar. Therefore, I am of the view that the Claimant/Respondent does indeed have reasonable grounds on which to bring the claim. As a result, the Claimant/Respondent's statement of case will not be struck out.

**ISSUE II- Whether the Claimant's claim of seeking a declaration to be declared as the daughter and sole beneficiary of the residuary estate of her deceased father is res judicata.**

[33] Black's Law Dictionary, 2nd Edition defines "res judicata" as "Latin- a thing adjudicated. Once a lawsuit is decided, the same issue or an issue arising from the first issue cannot

be contested again." Therefore, to determine whether the issues arising in the case at bar have already been adjudicated I have to refer to the case of **Leslie A. Watts** (*supra*) once again.

[34] In that case at paragraph four (4), Ms Watts was referred to as the "*daughter and only child of Mr. Watts*". **Leslie A. Watts** (*supra*) also looked at the mental capacity of Mr Watts (who is now deceased) and whether he had the capacity to make certain decisions related to the operation of his business. At paragraph 38, Mangatal J referred to Snell's Equity, 31st Edition. Paragraph 38 provides:

*[38] In Snell's Equity, 31st Edition, paragraph 8-44, under the heading "Unconscionable Bargains" it is stated:*

*"5. - Unconscionable Bargains*

*1. Lack of capacity.*

*"A gift will be set aside if it is shown that the donor lacked the requisite mental capacity. For these purposes mental capacity means "in each case whether the person concerned is capable of understanding what he does by executing the deed in question when its general purport has been fully explained to him." The doctrine applies to wills, contracts and gifts although the degree of understanding required depends on the nature of the transaction.... Once it is demonstrated that the donor lacked capacity in this sense the burden of proof shifts to the donee to demonstrate that the donor had the necessary understanding to validate the gift. If the donee fails to discharge the burden of proof, the transaction will be set aside. It has been suggested that a transaction entered into without the requisite mental capacity is void. But it is submitted that the better view is that such a transaction is voidable, and the doctrine can only be invoked where the donee is guilty of unconscionable conduct and the transaction is only liable to be set aside where the donee has knowledge of the incapacity."*

[35] At paragraph 45 of the abovementioned case, Dr. Goldson in his report dated February 21, 2011 said:

*"I have known Mr. Leslie Watts for over thirty years. I am aware that he suffered a stroke in March 2010, and that under the care of Dr. John Hall. had been admitted to the Medical Associates Hospital... I have also been providing medical assistance to Mr. Watts since his discharge from hospital in April 2010 to present. I visit Mr. Watts on an average of twice monthly. From my observations of Mr. Watts, his medical condition has impaired his behaviour, judgment, capacity to consistently recognize reality and ability to meet the demands of daily living. As a result of his condition, it is my opinion that he is unable to manage and administer his property and affairs without assistance."*

[36] Also, at paragraph [95] Mangatal J said:

*"I therefore find that Mr. Watts did not at the material times have the mental capacity to evaluate and make rational important decisions relating to his affairs."*

[37] At paragraph [105] Mangatal J said:

*"In my judgment, Mr. Watts did not have the requisite mental capacity to make rational important decisions and to evaluate the transactions attributed to him."*

[38] Having examined these sections of **Leslie A. Watts (supra)**, it is clear that the decision that Mr Watts was not capable of making certain decisions was made in the context of his inability to make decisions regarding the sound operation of his business affairs. It did not state whether his condition could affect his ability to identify and acknowledge that Ms Watts, the Claimant, was indeed his daughter. Therefore, I do not think that it is fair to rely on a decision that was made under different circumstances, with different facts and based on different issues to state that the birth certificate submitted by the Claimant/Respondent should not be used as evidence. This issue of fraud should be dealt with at the hearing of the substantive matter. Also, based on everything I have mentioned above in relation to this issue it is clear to me that the facts and issues arising in the case at bar do not amount to res judicata. This is so because the issues arising in the instant case are different and do not flow from the issues in **Leslie A. Watts (supra)**.

## CONCLUSION

[39] I am of the view that the Claimant/Respondent has a real prospect of succeeding on the claim. Also, it would not be in keeping with the overriding objective of the court to strike out the Claimant's statement of case when there are substantive issues that need to be resolved at trial. I also do not think that this matter is one of res judicata simply because the Claimant/Respondent is seeking a declaration that she is the sole child of the deceased as it was never a live issue in previous matters before the court. Therefore, I refuse the Defendant's Application.

[40] The Court makes the following orders:

1. The Claimant's statement of case will stand as is and will not be struck out.
2. Costs to the Claimant to be agreed a taxed.
3. The Defendant/Applicant's attorney-at-law is to prepare, file and serve this order.
4. Leave to Appeal is refused.