

**BARBADOS**

**NOVEMBER 27, 2020**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL DIVISION**

**Civil Suit No: 2279 of 2003**

**BETWEEN:**

**ERIC IAIN STEWART DEANE**

**PLAINTIFF/RESPONDENT**

**AND**

**MARJORIE ILMA KNOX**

**DEFENDANT/APPLICANT**

**Before: The Hon. Madam Justice Margaret Reifer, Judge of the High Court**

**Dates of Hearing:           2020: March 24  
  July 6  
  September 1  
  November 18, 26**

**Date of Decision:           2020: December**

**Appearances:**

**Ms. Sumaya Desai in association with Mr. Alair Shepherd QC (not present) on behalf of the Defendant/Applicant Eugene Estwick John Knox who appeared.**

**No appearances were made for the Plaintiff/Respondent.**

## **DECISION**

### **INTRODUCTION**

- [1] This is an application filed in one of the Knox v Deane (Deane v Knox) suite of cases. It is a rehearing of an application at the request of the Applicant thereto which said Application was heard before another Judge in March 2018.
- [2] It has had several hearing dates as noted above.
- [3] These applications are being heard via Zoom as a result of the pandemic. The record indicates that on 24 March 2020 there was no appearance by counsel for the Plaintiff/Respondent, but the matter was adjourned as a result of the 'Covid shutdown'. With respect to the hearing of 6 July 2020, a Take Notice was issued to the parties from the Registration Department followed by Zoom invitations in accordance with the current protocols. With respect to 1 September 2020 hearing, a Take Notice was issued to counsel for the Plaintiff/Respondent which was not collected, followed by a Zoom invitation which was not acknowledged. With respect to the hearing of 18 November 2020, a Take Notice was issued by the Registration Department and collected by counsel for the Plaintiff/Respondent and a Zoom invitation sent. With respect to 26 November 2020 hearing, a Zoom invitation was sent and acknowledged.

[4] No appearance having been made by counsel for the Plaintiff/Respondent, this Court exercised its powers and/or discretion under **Rule 11.14** to proceed in the absence of the Plaintiff/Respondent. This Rule provides:

“Where the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in his absence”.

### **THE APPLICATION BEFORE THIS COURT**

[5] The Application before this Court is an Amended Notice of Application filed 5 February 2018, pursuant to **Rule 21.8** of **CPR** seeking the following orders:

1. An Order that EUGENE ESTWICK JOHN KNOX of Bannatyne Plantation in the parish of Christ Church in this Island, the son of the Defendant MARJORIE ILMA KNOX, who died on the 29<sup>th</sup> day of September 2017 be appointed as the Representative of the Estate of the said MARJORIE ILMA KNOX, Deceased and be substituted as the Defendant in place of the said MARJORIE ILMA KNOX, Deceased;
2. An Order that ELIZABETH EILEEN ALICE DEANE of 45 Joypa Drive, Frere Pilgrim in the parish of Christ Church in this Island, the proposed Executrix of ERIC IAIN STEWART DEANE, Deceased who died on the 18<sup>th</sup> day of December 2016 be appointed as the Representative of the Estate of the said ERIC IAIN STEWART DEANE, Deceased and be, substituted as the Claimant in place of the said ELIZABETH EILEEN ALICE DEANE, Deceased and;
3. Such further or other orders as the Court deems just.

[6] The Application sets out 11 Grounds. These Grounds are set out ‘*in extenso*’ as they provide some relevant background.

1. The Defendant, MARJORIE ILMA KNOX, late of Punta Gorda Isles, Florida in the United States of Florida and

formerly of Bannatyne Plantation, Christ Church in this Island died in Florida on the 29<sup>th</sup> day of September 2017.

2. At the time of death, the Defendant was domiciled in Florida in the United States of America.
3. By her last will and testament dated the 5<sup>th</sup> day of March 2007, the said MARJORIE ILMA KNOX, appointed KATHLEEN ISABELLA DAVIS to serve as personal representative of her estate. A grant of probate was issued on the 5<sup>th</sup> day of October 2017 by the Circuit Court for Charlotte Country Florida to KATHLEEN ISABELLA DAVIS.
4. The said KATHLEEN ISABELLA DAVIS, the executrix of the estate of MARJORIE ILMA KNOX is not desirous of being the personal representative for the purposes of the litigation in Barbados. Accordingly, the Circuit Court for Charlotte County, Florida, on an application by the said KATHLEEN ISABELLA DAVIS, issued an Order dated the 21<sup>st</sup> day of November 2017 appointing EUGENE ESTWICK JOHN KNOX *administrator ad litem* in the Estate of MARJORIE ILMA KNOX, Deceased with authority to act on behalf of the Estate for the limited purpose of (1) acting on behalf of the Estate with respect to each litigation case that is currently pending in Barbados in which the Decedent, MARJORIE ILMA KNOX, was a party and/or an interested person prior to her death ("Barbados cases"); and (2) acting on behalf of the Estate with respect to any matter related to the Barbados cases; and (3) executing any required documentation related to the litigation in Barbados and to any other matter related to the Barbados cases.
5. Any application to reseal the grant of probate in Barbados will be made by the said EUGENE ESTWICK JOHN KNOX.
6. The said EUGENE ESTWICK JOHN KNOX has no interest adverse to that of the Estate of MARJORIE ILMA KNOX.
7. The Claimant ERIC IAIN STEWART DEANE, Deceased, late of Augustine's Way, Haywards Heath, West Sussex, England died in England on the 18<sup>th</sup> day of December, 2016.
8. At the time of death, the Claimant was domiciled in England.

9. By his last will and testament dated the 21<sup>st</sup> day of October 2016 the said ERIC IAIN STEWART DEANE, appointed the said ELIZABETH EILEEN ALICE DEANCE as one of the personal representatives of his estate. An application for a grant of probate in the estate of ERIC IAIN STEWART DEANE was made on behalf of the said ELIZABETH EILEEN ALICE DEANE on the 1<sup>st</sup> day of June 2017.
10. A caveat was filed against the application by EUGENE ESTWICK JOHN KNOX on the 26<sup>th</sup> of June 2017 and a warning to the Caveator filed on the 5<sup>th</sup> of July 2017. An appearance to the warning was filed on the 18<sup>th</sup> day of July 2017. A notice of application was filed on the 13<sup>th</sup> of November 2017 and comes on for hearing on the 21<sup>st</sup> day of February 2018. The Caveator consents to the grant of probate of the will of ERIC IAN STEWART DEANE dated the 21<sup>st</sup> day of October 2016 be made to ELIZABETH EILEEN ALICE DEANE, who is named as Executrix therein.
11. The said ELIZABETH EILEEN ALICE DEANE the executrix of the estate of ERIC IAIN STEWART DEANE, does not have, as far as the Applicant is aware, any interest adverse to the Estate of ERIC IAIN STEWART DEANE, Deceased.

[7] The following additional documents have been filed in support of this Application:

1. The Affidavit of Eugene Estwick John Knox filed 5 February 2018;
2. The Affidavit of Eugene Estwick John Knox filed 23 February 2018;
3. The Consent of Eugene Estwick John Knox filed 1 March 2018 to be appointed as representative of the Estate of Marjorie Ilma Knox and to be substituted as Defendant in this action.
4. The further Affidavit of Eugene Estwick John Knox filed 25 November 2020.

**SUBMISSIONS**

- [8] Written Submissions were filed in response to the subject Application by counsel for the Plaintiff/ Respondent on 26 February 2018.
- [9] Answering Submissions were filed by counsel for the Applicant/Defendant on 7 March 2018.
- [10] On the hearing of the Amended Notice of Application before this Court counsel stood by the Written Submissions filed 7 March 2018. I shall reproduce these submissions here.
- [11] No appearance was made by counsel for the Plaintiff/ Defendant, but this Court did take note of his submissions in opposition to this Application.

**DISCUSSION AND ANALYSIS**

- [12] Suit No. 2279 of 2003, according to the background provided by counsel for the Defendant/Applicant in her Written Submissions, is an action brought by Plaintiff Eric Iain Stewart Deane against Defendant Marjorie Knox in which he sought a declaration that a declaration of trust made on 28 November 2002 by the said Marjorie Ilma Knox was made with the intention of defrauding the Plaintiff as her Judgment Creditor and an Order that she deliver up said Declaration of Trust for cancellation.
- [13] The Plaintiff and Defendant died before this matter was determined by the Court and the Defendant's survivors in the person of Applicant Eugene

Estwick John Knox and Kathleen Davis are desirous of taking this matter to final determination. The position of the beneficiary Mary Jane Goddard is ambivalent.

[14] The following significant facts are acknowledged by this Court:

1. The Order of Alrick Scott J. (Ag) dated 21 February 2017 ordering by Consent “ That Grant of Probate of the Will dated the 21<sup>st</sup> day of October 2016 of Eric Iain Stweart Deane, deceased be made and issued to the Executrix Elizabeth Eileen Alice Deane. Her Application for Grant of Probate was filed 1 June 2017.
2. That Kathleen Isabella Davis was appointed as personal representative of the estate of Marjorie Ilma Knox by the Circuit Court of Charlotte County, Florida, where she was domiciled and/or resident at the time of her death.
3. That Kathleen Davis petitioned and received from the Florida Court an order appointing Eugene Knox as personal representative of the Estate for the purposes of any litigation subsisting in Barbados.

[15] This Application was brought pursuant to **Part 21** of **CPR**, the relevant parts being **21.7**, **21.8** and **21.9** which provide as follows:

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

(5) A decision in proceedings where 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."

"**21.8** (1) If 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."

"**21.9** (1) Where a claimant dies and his personal representative does not apply for an order under **Part 19** to be substituted as claimant, the defendant may apply for the claim to be struck out.

(2) Notice of the defendant's application must be given to the personal representative of the claimant, if any, and such other persons as the court may direct.

(3) The general rule is that if the court makes an order on an application under this rule, it shall be that unless the personal representative or some other person on behalf of the estate applies to be substituted under **rule 19.3** or for directions under **rule 21.8** by a specified date, the claim shall be struck out.

(4) The court may give directions under **rule 21.8** at the hearing of an application under this rule."

[16] **Part 19** of CPR (as submitted in the written submissions filed February 2018)

is, in the opinion of this Court, not the appropriate Part under which the subject Application should have been brought. It has been appropriately brought under **Part 21** as there is no legal representative of the Estate of Marjorie Knox in accordance with the Laws of Barbados. **Part 19** is of general

application, while **Part 21** is specific to the current circumstances, namely proceedings against the estate of a deceased person where the deceased has no personal representative and the power of the court to give directions to enable proceedings to be carried on after a party's death.

[17] It appears from a reading and general interpretation of this provision, which is similar but not entirely "*in pari materia*" with Rule 19.8 of the United Kingdom CPR, that this Rule enables the court to appoint someone to represent the estate in substitution of the party who has died and that this power can be exercised by the court whether the deceased party was a claimant or a defendant in the proceedings and whether or not an application has been made to the court.

[18] In **Berti v Steele Raymond [2001] EWCA Civ 2079** Robert Walker L.J. stated as follows as it related to the UK's CPR 19.8:

"... it is apparent from the rule [r. 19-8] as a whole that it gives the court quite wide powers to dispense with the need for a formal grant of probate or letters of administration after the death of the party. It seems to recognize that, especially with relatively small claims, the need for a formal grant may be disproportionate; and cause unnecessary delay and expense."

[19] See also **Halsbury Laws of England 5<sup>th</sup> Edition 2009 Volume 2 paras. 238-239.**

[20] The same can be said of the Barbados provision.

[21] In the case of **East Caribbean Conference of Seventh day Adventists v Puchi, High Court of Barbados CV 582 of 2010**, my brother Chandler J heard an application for the appointment of an administrator ad litem and had to consider whether the defendant therein ought to be appointed to represent the estate of his mother. The court granted the order after determining that the relevant authorities were **Section 19** of the **Succession Act, Cap. 249** and **CPR 21**, specifically **21.7**.

[22] **Section 19 (7)** of the **Succession Act Cap. 249** provides:

“**19. (7)** Where a person has died (whether before or after the commencement of this Act) and because of the circumstances it appears to the Court to be necessary or expedient to do so, the Court may, notwithstanding any enactment or rule of law to the contrary, grant administration of the estate of the deceased (with or without the will annexed) to an administrator upon his giving such security, if any, as the Court directs, and such grant may be limited in any way the Court thinks fit.

[23] **Section 19**, as observed by Chandler J., though not identical to, is ‘*in pari materia*’ with section 116 of the Supreme Court Act, 1981 (UK). Chandler J expressed the view that the procedure adopted in the United Kingdom’s Rule 19.8(2) provides a simpler procedure for the appointment of an administrator ad litem so that the necessary and proper parties to the action can be constituted.

[24] See also Henry J in **Gertrude Moore v Representative in the Estate of Rodney Sayers et al SVGHCV 2018-0149**.

### **The Application relating to the case for the Defendant**

[25] This application appears to have met the necessary requirements of **CPR 21.7(2) (a) and (b)**, namely that the Applicant can fairly and competently conduct the proceedings on behalf of his mother's estate and has demonstrated no interest adverse to that of his mother's estate. In this regard, the ruling of the Florida Court, assent of Kathleen Davis duly appointed representative of the Estate and filed Consent of the Mary Jane Goddard buttresses the decision of this Court.

[26] I am also re-enforced in this position by the decision of my brother Alleyne J in **CV 1291 of 2003 Marjorie Ilma Knox v Eric Iain Steward Deane (The duly qualified acting executor of the Estate of COLIN IAN STEWARD DEANE, deceased) Unreported Decision of 21 February 2019**. In that case, a similar application was made by this Applicant to be substituted for his mother Marjorie Knox in that action pursuant to **CPR 21.7(1)**. That Court determined that Ms. Knox's estate has no personal representative for the purposes of **CPR 21.7(1)** or **CPR 21.9** as the Order of the Court in Florida had not been resealed pursuant to the **Probates and Letters of Administration (Resealing) Act Cap 247**. In the premises, Alleyne J expressed his intention to grant Mr. Knox's application provided he secures evidence of Ms. Goddard's consent or indifference to the application.

### **The Application relating to the case for the Plaintiff**

- [27] **CPR 21.7 (1)** read together with **21.2 (1)** empowers this Court to make an Order appointing someone to represent the deceased's person's estate for the purpose of the proceedings in an application such as this made by a defendant.
- [28] The *proviso*, however, is that this power can only be exercised "if the deceased person has no personal representative".
- [29] A reading of **CPR 19** in conjunction with **21.9**, shows how these provisions interact. A personal representative is expected under **CPR 19** to apply to the Court for an Order to be substituted as claimant where the deceased was a claimant in proceedings before his (her) death. The provisions of **21.9 (1)** are clear, in that, where a personal representative fails to make such an application, a defendant may apply for the claim to be struck out.
- [30] There is no need to appoint a representative of the Plaintiff under **CPR 21.8** as there is already a duly appointed representative in the form of Elizabeth Eileen Alice Deane.
- [31] However, this longstanding matter needs, in the interest of justice, saving expense and proportionality, to be brought to an end with the participation of all relevant persons. It is at the discretion of the Court and in determining whether to exercise this discretion this Court pays due regard and gives effect to the Overriding Objective of the **CPR**. In this regard, special reference is

made to **CPR 1.3** which places a duty on parties to litigation to help the court to further the overriding objective. Accordingly, this Court frowns on the refusal of counsel for the estate of Eric Iain Steward Deane to participate in this proceeding and/or to initiate a similar application of their own.

[32] My initial reluctance to make an order possibly against the will of the Proposed Claimant/Plaintiff is dissipated by the particular circumstances of this matter and particularly in the face of the order of Scott J (ag) above, which said order was promoted by the application of the said Elizabeth Deane to prove the will from which her authority originated and the subsequent receipt by her of the .....

[33] It is this Court's view that the legal representative of this Estate, is by inference the person best suited to fairly and competently conduct and continue these proceedings on behalf of the estate and has demonstrated no interest adverse to that of the said Estate.

[34] Contrary to the argument in the written submissions of her counsel dated 2018, **CPR** does not require the written consent of his client in order that the Court may make an order under **CPR 21**.

#### **The Affidavit of November 25<sup>th</sup> 2020**

[35] This Affidavit has proven to be a game changer. This Court expected the Consent of Mary Jane Goddard to be filed. The clearly defamatory content,

notwithstanding, there is no clarity as to whether Mary Jane Goddard consents to or is indifferent to the Estate in the person of her brother Eugene Estwick John Knox continuing the subject action. This clearly has financial consequences to the said Mary Jane Goddard and to costs.

### **FURTHER OBSERVATIONS**

[36] The Applicant is free to ... the Grant issued to his sister Kathleen Davis by the Circuit Court for Charlotte County, but it has no effect on this Court's exercise of its power/discretion under **CPR Part 21**.

[37] With respect to any alleged procedural errors made by the Applicant, this Court is satisfied that the Application is properly made under **CPR 21**, and is prepared to rely on **CPR 26.4** as it relates to any further or alleged procedural errors. These provisions provide:

“**26.4** (1) ...

(2) An error of procedure or failure to comply with a rule, practice direction or court direction or order does not invalidate any step taken in the proceedings, unless the court so orders.

(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to rectify the error or failure.

(4) The court may make such an order on or without an application by a party.”

**DISPOSAL**

[38] Pursuant to the above, this Court makes the following Order:

**IT IS ORDERED:**

1. That all further proceedings on behalf of the Defendant in this action shall be carried on by Eugene Estwick John Knox of Bannatyne Plantation in the parish of Christ Church as Representative of the Estate of Marjorie Ilma Knox in this Island, who is competent to conduct the proceedings on behalf of the estate of the defendant who died on 29 September 2017.
2. That all further proceedings on behalf of the Plaintiff/Respondent in this action shall be carried on by Elizabeth Eileen Alice Deane of 45 Joypa Drive Frere Pilgrim in the parish of Christ Church in this Island the duly qualified Executrix of the Estate of Eric Iain Stewart Deane who died on 18 December 2016 and who is deemed to be competent to conduct the proceedings on behalf of the Estate of the deceased.
3. Unless a step in these proceedings is taken by the legal representative of the Plaintiff/Respondent within 28 days of the service of this Order on her, the Plaintiff's action shall be struck

out without the need for further application to this Court pursuant to **CPR 21.9 (3)** and the Overriding Objective.

4. That the title of this action shall be amended to reflect the appointment of Eugene Estwick John Knox and Elizabeth Eileen Alice Deane as Defendant and Plaintiff/Claimant to represent the estates of Eric Iain Stewart Deane and Marjorie Ilma Knox.
5. That this Order shall be served on named beneficiary of the Estate of Marjorie Ilma Knox, Mary Jane Goddard.
6. That no order is made as to costs.
7. Liberty to apply granted to Mary Jane Goddard.

**MARGARET REIFER**  
Judge of the High Court