

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Probate Division  
2021/PRO/cpr/FP/00006**



**IN THE MATTER OF the authority vested in the Executor of the WILL of the Late OSWALD STANMITZ FORBES executed on the 13<sup>th</sup> day of September, A. D. 2016 AND FOR THE Revocation of the said WILL dated the 13<sup>th</sup> day of September, A. D. 2016 AND Revocation of the Grant of Probate issued to by the Supreme Court of the Commonwealth of The Bahamas in Probate Division Action 2021/PRO/npr/FP/00026 to DR. WINSTON FORBES as the sole Executor of the Estate of OSWALD STANMITZ FORBES, deceased.**

**AND**

**IN THE MATTER of The Probate and Administration of Estates Act and Probate and Administration of Estates Rules 2011**

**AND**

**IN THE MATTER OF THE ESTATE OF the late OSWALD STANMITZ FORBES, Date of Death, the 8<sup>th</sup> day of June, A.D. 2018**

**B E T W E E N**

**KARSHIE COOPER  
Plaintiff**

**AND**

**DR. WINSTON FORBES  
Defendant**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley

**APPEARANCES:** Miss Sherita O. Forbes for the Plaintiff  
Miss Pleasant M. M. Bridgewater for the Defendant

**HEARING DATE:** August 25, 2021

**RULING**

Application for the Determination of a Preliminary Points

**Introduction**

1. The Plaintiff purports to be the Intended Executor and Trustee of the Estate of the late Carolyn Angenell Forbes. He claims that he was appointed as such in her Last Will and

Testament dated February 8, 2021. The late Carolyn Angenell Forbes died on February 18, 2021. She was the widow of the Late Oswald Stanmitz Forbes who died testate on June 8, 2018.

2. The Defendant is the Executor appointed in the Last Will and Testament of the late Oswald Stanmitz Forbes dated September 16, 2016 which was admitted to probate on May 10, 2021 in the Supreme Court of the Commonwealth of The Bahamas on its Probate Side in Action 2021/PRO/npr/FP/00026.
3. The Plaintiff purportedly commenced this action by filing a document entitled "Application for Revocation of a Grant" on May 26, 2021. The Application seeks an order revoking the Grant of Probate issued by this Court on May 10, 2021 to the Defendant, a declaration that the Plaintiff as Trustee, Executor and Heir of the Estate of the late Carolyn Angenell Forbes is the owner of duplex A & B situate at No. 82 Marley Drive and Cartier Circle, Freeport, Grand Bahama ("**the subject property**") and an injunction against the Defendant, his heirs, servants and agents restraining the Defendant from molesting the Plaintiff, his heirs, servants and agents until the determination of this matter.
4. The Plaintiff also filed a Summons on May 26, 2021 seeking an order revoking a Will and a Grant of Probate. The Plaintiff's application is supported by the Affidavits of the Plaintiff and Judith C. Cooper filed on May 26, 2021.
5. The Defendant filed a Notice and Memorandum of Appearance on June 18, 2021 and a Summons on the same date seeking an order for immediate vacant possession of No. 82B of the subject property; an order striking out the Plaintiff's application, and an order for an accounting from the Plaintiff of rental income from No. 82A of the subject property and costs. The application is supported by the Defendant's Affidavit filed on June 18, 2021.
6. The Defendant has raised 2 preliminary objections, firstly, that the action has not been commenced pursuant to Order 68, Rule 2 of the Rules of the Supreme Court ("**the RSC**") by the filing of a Writ of Summons and is therefore not properly before the Court and, secondly, that the Plaintiff has not obtained a Grant of Probate in the Estate of the late Carolyn Angenell Forbes and has no locus standi to bring this action.
7. Miss Forbes conceded that the Plaintiff has not obtained a Grant of Probate in the Estate of the late Carolyn Angenell Forbes and further, that pursuant to Order 2 Rule (1) the Court ought not set aside the Plaintiff's action due to the said irregularity.

## Issues

8. The Court must now consider (i) whether the Plaintiff's non-compliance with the provisions of the RSC, in particular Order 68, Rule 2, amounts to an irregularity that can be cured, and (ii) whether the Plaintiff as the Intended Executor and Trustee of the Estate of the late Carolyn Angenell Forbes has locus standi to bring proceedings against the Defendant.

## Analysis and Discussion The Law

9. Order 68, Rule 2 and 3 of the RSC states:-
  - "2. (1) A probate action must be begun by writ, and the writ must be issued out of the Registry.
  - (2) Before a writ beginning a probate action is issued it must be indorsed with —
    - (a) a statement of the nature of the interest of plaintiff and of the defendant in the estate of the deceased to which the action relates; and
    - (b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of it have been lodged with him.
  3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant."
10. The Probate and Administration of Estates Rules, 2011 ("**PAE Rules**") also makes provisions for contentious probate proceedings under Part III. In particular Rule 31 of the PAE Rules sets out the procedures for either obtaining a grant of probate of a will or letters of administration of the estate of a deceased person; a revocation of a grant; and a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business. Additionally, Rule 32 under the rubric "Application for contentious probate" states:

"A person who seeks to begin a contentious probate action must do so by writ issued out of the Registry and indorsed with —

  - (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action related; and

(b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of the will have been lodged with the Registrar.”

11. Order 2, Rule 1 of the RSC states:

“1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.”

**Discussion**  
**Locus Standi**

12. The Plaintiff in his Affidavit filed May 26, 2021 deposes in part that he is the Executor and Trustee of the Last Will and Testament of the Late Carolyn Angenell Forbes dated February 8, 2021. He also deposes that the late Carolyn Angenell Forbes executed a Will on February 8, 2021 leaving him as Executor, Trustee and Heir and that in his capacity as

Executor and Trustee he is to use the subject property to care for her son, Kensey Kingsley Cooper and her mother Geleta Ann Armbrister.

13. It is noted that the Plaintiff in his Affidavit also sets out various allegations against the Defendant. However, the Plaintiff does not state whether he or his attorney has made any application to the Court for a grant of probate in the estate of the Late Carolyn Angenell Forbes; whether a grant of probate has been given by the Court in the estate of the Late Carolyn Angenell Forbes; or whether a temporary grant has been given by the Court in the estate of the Late Carolyn Angenell Forbes in his favour.
14. Section 11 of the Probate and Administration of Estates Act ("**the Act**") states: "**When administration has been granted in respect of any real or personal estate of a deceased person, no person other than the person to whom the grant has been made shall have power to bring an action or otherwise to act as an executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.**"
15. Considering that no grant has been given in the estate of the Late Carolyn Angenell Forbes to the Plaintiff, Miss Forbes also having conceded this, I find that the Plaintiff has no standing to bring this action or any action on behalf of the estate of the late Carolyn Angenell Forbes until such grant or a Preliminary Order has been given by the Court.

#### **Non-Compliance with Rules of Court**

16. It is not disputed that the matter before the Court is a probate action. Additionally, given the nature of the probate action, i.e. an application to revoke the said grant, I find that these proceedings fall under Part III of the PAE Rules and are considered contentious proceedings. Rule 32 (a) and (b) are clear, a probate action must be begun by a Writ of Summons. The usual procedure in a contentious probate action is that before a Writ is issued, the Writ must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates with a statement of claim and a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of it have been lodged with him. This requirement was not followed in this case.
17. Considering the Plaintiff's failure to meet the requirements under Rule 32 (a) and (b) of the PAE Rules, I pause to consider, as advanced by Miss Forbes, the effect of Order 2, Rule 1 of the RSC. The document entitled "Application for Revocation of a Grant" is not

an Originating Summons nor is it a Writ of Summons. The deficiency/irregularity cannot be cured by amendment. It is not in my view the type of irregularity contemplated by Order 2 Rule 1 of the RSC. Furthermore, in contentious probate proceedings the PAE Rules govern procedure.

**Conclusion and Disposition**

18. In summary, having found that the Plaintiff lacks locus standi to bring this action and further that the non-compliance with Rule 32 of the PAE Rules cannot be deemed an irregularity that can be cured by Order 2 Rule 1 of the RSC, I hereby dismiss these proceedings brought by the Plaintiff and as a result, the Defendant's Summons falls away.

**Costs**

19. As costs usually follow the event I see no reason to depart from the usual costs order. The costs of the Defendant is to be paid by the Plaintiff, to be taxed if not agreed.

This 15<sup>th</sup> day of September, A. D. 2021

  
**Petra M. Hanna-Adderley**  
**Justice**