

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Probate Division**

**2023
PRO/cpr/No. 00034**

BETWEEN

**In the Matter of the estate of Alfred Benjamin Butler
In the Matter of the estate of Lorraine Elizabeth Butler nee Dorsett
In the Matter of the Probate & Administration of Estates Rules 2011**

**APOLLO BENJAMIN BUTLER (1)
CHRISTOPHER ONEAL BUTLER (2)
SHANIECE MARY RAHMING nee Butler (3)
MARK ROMER (4)**

Claimants

AND

ESTATE OF LORRAINE ELIZABETH BUTLER nee DORSETT (1)

RICQEA BAIN (2)

In her capacity as beneficiary of the Estate of Lorraine Elizabeth Butler

LEON SAUNDERS (3)

In his capacity as beneficiary of the Estate of Lorraine Elizabeth Butler

Defendants

JUDGMENT

Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE
Appearances: Romauld Ferreira of Counsel for the Claimants
Keod Smith of Counsel for the Second Defendant
Hearing Date: 2nd February 2024, 26th March 2024, 4th June 2024, 4th November 2024,
19th November 2024, 25th February 2025, 7th May 2025

*Probate-Probate and Administration of Estates Act- Probate and Administration of Estates Rules
2011-The right to occupation-Trustees*

Introduction

1. By Fixed Date Claim filed 6th October 2023, the Claimants brought an action against the Defendants seeking the following reliefs:
 - I. An Order pursuant to Section 68 of the Administration of Estates Act 2011;
 - II. General Damages;
 - III. Aggravated and/or Special Damages;
 - IV. Damages for Misrepresentation;
 - V. Damages;
 - VI. Interest pursuant to Civil Procedure (Awards of Interest) Act, 1992 thereon;
 - VII. Such further or other relief as the court may seem just; and
 - VIII. Cost

Background

2. The Claimants are the biological children of the late Alfred Benjamin Butler. The First Defendant is the Estate of Lorraine Elizabeth Butler (nee) Dorsett and the 2nd and 3rd Defendants are potential beneficiaries in her estate, but actual residents/occupiers in the home or the asset in dispute.
3. Following an application for Letters of Administration in the Estate of Alfred Benjamin Butler, Lorraine Elizabeth Butler (nee) Dorsett identified herself as the sole survivor leaving no issue.
4. In Action No. 1297 of 2009 Lorraine Elizabeth Butler (nee) Dorsett was Ordered by Sir Michael Barnett CJ as he then was, that no dispositions of the real and personal property of Alfred Benjamin Butler was to be made.
5. On the 16th April 2021 Lorraine Elizabeth Butler (nee) Dorsett executed a Deed of Assent conveying real property from Alfred Benjamin Butler estate to herself.

The Claimants Evidence

The Claimants aver that:

6. All of the Claimants are the biological children of Alfred Benjamin Butler who died intestate on the 11th January 2008.

7. That a Search at the Probate Registry on 4th October 2023 revealed that no application for a Grant of Probate or Letters of Administration were received on behalf of the Estate of Elizabeth Lorraine Butler.
8. That in her application for Letters of Administration, Elizabeth Lorraine Butler misrepresented that Alfred Benjamin Butler died having no issue.
9. My father's estate comprises of the following:
 - I. ALL THAT piece parcel or lot of land situate on Premier Drive in the Subdivision called and known as "Blue Hill Heights" in the Western District of the Island of New Providence in the Commonwealth of The Bahamas;
 - II. ALL THAT piece or lot of land situate in the Subdivision called and known as "Victoria Gardens" and being Lot Number Fifty (50);
 - III. ALL THAT pieces parcels or lots of land comprising Lots #7269, 7270 and 7272 of Bahama Sound Exuma Number 11 situate in the Island of Great Exuma in the Commonwealth of The Bahamas;
 - IV. Household goods valued at \$200;
 - V. Savings Account at The Bank of The Bahamas \$13,230.25;
 - VI. Certificate of Deposit at The Bank of The Bahamas \$21,267.83;
 - VII. Christmas Club Account at The Bank of The Bahamas \$484.73;
 - VIII. Shares with Bahamas Utilities Co-Operative Credit Union Ltd. \$7,415.25 and
 - IX. Gratuity from Bahamas Power and Light \$66,553.57.
10. That Letters of Administration was granted to Lorraine Butler on 18th December 2008.
11. That on the 15th September 2009 Sir Michael Barnett made an Interim Restraining Order preventing the dispositions of any property, real or personal forming part of his father's estate.
12. That on the 25th May 2011, Sir Michael Barnett delivered his ruling in the matter and determined that the Claimants are entitled to inherit one half of the estate of the deceased.
13. On the 16th April 2021 Lorraine Butler executed a Deed of Assent between herself as Administrator for her father's estate to herself as sole beneficiary of our father's estate.
14. That they have been deprived, disenfranchised and robbed of their inheritance and legacy.

Issues of the Claimants

1. Whether the Deed of Assent should be revoked.
2. Whether they are entitled to possession of the matrimonial home.

Issues as per the 2nd Defendant

1. Whether the jurisdiction of the Supreme Court was properly invoked.
2. Whether this action is brought outside the limitation period and if so should it be heard.
3. Whether a new action should have been commenced or the action commenced in 2009 should continue.
4. That Parties are bound by their pleadings.

15. The Probate and Administration of Estates Act, Chapter 108 Statute Laws of the Bahamas provides at Section 68 (1) (2):-

“(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance, the court may, on the application of any creditor or other person interested –

(a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

(b) declare that the person, not being a purchaser in whom the property is vested, is a trustee for those purposes;

(c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act.”

Decision

16. The Second Defendant did not file a Defense, however in closing submissions raised the following arguments for the Court's consideration:-

- I. Claimants could not invoke Supreme Court's jurisdiction.
 - i. She stated that "*Having regard to **Sections 2 and 3 of the Survival of Action Act 1992** ("SAA-1992"), action No. 1297 of 2009 continued as against Mrs. Butler even after her death on 22nd July 2022 at which point it survived against her. There was no Order issued by the Court striking out Action No. 1297 of 2009*" and "*As such, therefore, when considering that Action No. 1297 of 2009 was still extant at the time the Claimants commenced the current Action, we say that at a minimum, it amounts to an abuse of the process of Court and should be struck out.*"
- II. Counsel for the Second Defendant submits that the Second and the Third Defendants are not proper parties to the action as they are listed as "potential beneficiaries." That "there is nothing shown by the Claimants that the personal or real property of the late Mr. Butler had been given or otherwise transferred to those Defendants."
- III. That the time for bringing the action under the Statute of Limitations has passed, in that "*having regard to **Section 30 of LA-1995**, we submit that when considering that the right to action against the late Mrs. Butler could only have accrued on the grant of Letters of Administration which, as a matter of fact, was granted on 18th December 2008 would mean, we submit, that the 12-year limitation would have expired on 18th December 2020, nearly 3 years before this Action actually commenced*" and thus the Court has no jurisdiction to hear the matter.
- IV. That the estate of the late Mrs. Butler having not been administered there is no personal representative and so the Claimants cannot move the Court.
- V. Whether the Claimants are children of the late Mr. Butler. This Court will not revisit this issue as it was determined by Sir Michael Barnett CJ as he then was in Action No. 1297 of 2009.

- VI. That the 2009 action is where the Claimants should have brought their claim and to commence this action is an abuse of process and the Court has no jurisdiction to hear it.
- VII. That *“with the interlocutory injunction in place, it was observed fully by the late Mrs. Butler until 2021, more than 12-18 months after the inaction of Claimant during which time the late Mrs. Butler proceeded with executing the said Deed of Assent. This would have been during a time when the Claimants would have been statutorily prohibited from seeking to claim the real and/or personal property of the late Mr. Butler.*
17. The Court notes that the 2nd and 3rd Defendants are residing in the home that the Claimants state that they have a 50% interest in. This asset of the estate of Alfred B. Butler was transferred to Lorraine E. Butler and while her estate has not been probated, the Defendants are in fact occupiers of the asset to the exclusion of the Claimants. By virtue of their relation to Lorraine E. Butler they may be potential beneficiaries. The Court finds this argument contradictory at best, in that the 2nd Defendant acknowledges there was an “interlocutory injunction” preventing Mrs. Butler from executing the Deed of Assent and she breached this in 2021, she then argues “it was observed fully by the late Mrs. Butler until 2021” and that breach was after the statutory limitation period had passed. The Court is of the view that he who comes to equity must come with clean hands. The foundation of this argument lies on the breach of the Court Order of Sir Michael Barnett. Mrs. Butler breached the Order and it matters not whether it was the day after or 12 years later, an existing Order was breached. The Deed of Assent is void ab initio. Mrs. Butler knowing the Claimants were entitled to 50% of the estate of the late Alfred Butler sought to defraud the Claimants of their entitlements.
18. The 2nd Defendant submits that the Claimants are restricted to their pleadings and there is no request to have the 2nd and 3rd Defendants evicted or a requested Order against them. The 2nd Defendant submits that the Claimants should have continued with the 2009 action as the ruling was an interlocutory one based on the Court saying, “I will now hear the parties of the continuation prosecution of this case...”

19. The 2nd Defendant referred to the case of **Glendon E. Rolle v Scotiabank (Bahamas) Limited**, it was a “preliminary point raised by Counsel.” The Court accepts the principle advanced in this case *“that the parties are bound by their pleadings and therefore, the Plaintiff cannot generally seek to advance a case that is not expressly raised in his pleadings.*

(38) It is therefore necessary for me to say something on pleadings. The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded because that will come from the affidavits and cross-examination thereon or by oral evidence. ”

20. The Court accepts that the Claimants are bound by their pleadings. In **Montague Investments Limited v. Westminster College and Another [2015/CLE/gen/00845]** the Court speaking to pleadings stated *“Pleadings are still required to mark out the parameters of the case that is being advanced by each party so as not to take the other by surprise. They are still vital to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader and the court is obligated to look at the witness statements to see what the issues between the parties are.*

(42) Shortly put, parties are bound by their pleadings and a party cannot generally seek to advance a case that is not expressly raised in his (her) pleadings. ”

21. The Claimants are bound by their pleadings and cannot advance other grounds or issues in their submissions. I do not accept that these are new grounds pleaded, but are the requested remedies to be given based on the court’s ruling on the issues raised in the pleadings. They are reliefs given based on the determination of the issues. The Defendant is suggesting that should the court find for the Claimants they are not entitled to the logical remedies to give effect to the findings.

22. The Claimants in their pleadings sought an Order pursuant to Section 68 of the Probate and Administration of Estates Act. This Section empowers the Court on application by a person interested to *“Order atransfer or other transaction to be carried out which*

the Court considers requisite for the purpose of giving effect to the right of the person interested.”

23. Thus the Claimants requested for these Orders:-

- I. An Order granting half the real and personal estate of Alfred Benjamin Butler to the Claimants.
- II. An Order revoking the Letters of Administration issued to Lorraine Butler in the estate of Alfred Benjamin Butler.
- III. An Order revoking the Deed of Assent executed by Lorraine Butler.
- IV. An Order of eviction against the second and third defendants evicting them from the residence at Premier drive, Blue Hill Heights subdivision.
- V. An Order appointing the first Claimant Apollo Butler Administrator of the estate of Alfred Benjamin Butler.

should they be successful on the application made in their Fixed Date Claim/Pleadings.

24. As to the first three issues raised by the 2nd Defendant, being, the Court’s jurisdiction, statute of limitation and should this action have commenced by Fixed Claim or continued under the previous 2009 action fail, as the Defendant waived the right to object to any irregularity in proceedings that existed by taking the numerous fresh steps in this action.

25. Winder J, as he then was in **Blue Planet Group Limited v Downie; Downie v Blue Planet Group Limited [2019] 1BHSJ No. 14** stated *“It is now settled law that Order 2 of the RSVC effectively eliminates the concept of a nullity and any defect in proceedings is an irregularity which is capable of being rectified by the court.”* Noting further that *“...regarding every omission or mistake as an irregularity which the court can and should rectify so long as it can do so without injustice.”*

26. In addressing the issue of irregularities Kelsick J held in **Tiffany Glass v FPlan Ltd (1979) 31 WZR 470** *“Entry of an unconditional appearance to a defective writ waives any objection to the jurisdiction of the court as well as any irregularity in the commencement of the proceedings. So also does any fresh steps taken with the knowledge of the irregularity, with a view to defending the action on its merits.”*

27. If the 2nd Defendant wished to raise an objection to the jurisdiction of the court the appropriate course of action was decided in ***Peter and another v Ahmed Maheer Abouelenin [2008] 2BHSJ No. 25*** by Evans J *“It seems clear from the rules that a*

defendant wishing to raise an objection to the jurisdiction of the court should do so before entering an appearance or after having obtained leave to enter an unconditional appearance and then within the time limited for making such application, usually fourteen (14) days, failing which he is deemed to have submitted to the jurisdiction of the court.”

28. In **Gateway Ascendancy Ltd. vs The Estate of the Late Percy Burrows 2014/CLE/gen/00402** this Court considered the issues of filing a Writ outside the limitation period and the jurisdiction of the Court, it found that filing documents and the Defendant’s participation in the proceedings each formed a “fresh step” in the proceedings which subsequently waived the irregularities of the Plaintiff. Had the Defendant filed a conditional appearance and an application to strike out this action, the outcome would have been different. Subsequently, at this stage, the Defendant has submitted to the jurisdiction of the Court and waived any and all irregularities.
29. The Claimant obtained an Order for substituted service on the 26th March 2024. The 2nd Defendant signed an Acknowledgment of Service on the 23rd November 2023, filed a Notice of Change of Attorney on 24th October 2024. The 2nd Defendant appeared at the Court hearing on the 4th June and 19th November 2024, participated in the trial and never raised any objection to the Court’s jurisdiction, limitation period or the method by which the action was commenced. The Defendant submitted to the jurisdiction of the Court and waived each irregularity. The 2nd Defendant, defended this action at trial and provided oral and written submissions.
30. I find that with each step taken by the 2nd Defendant in these proceedings, she waived the irregularities being alleged. Had the Defendant filed an application to strike out this action upon being served the results may have been different. The merits of the objections would have been litigated. At this point the 2nd Defendant has accepted the jurisdiction of this court and waived all irregularities.
31. The Court is of the view that by virtue of Section 24 (1) of The Inheritance Act Chapter 116, the late Lorraine E. Butler had a right to reside in and occupy the matrimonial home until her death or remarriage per the Inheritance Act. The Claimants therefore had no cause of action to obtain their inheritance until one of those events occurred. It was upon the death of Lorraine E. Butler, the Claimants became entitled to obtain their 50% interest in the property which was the matrimonial home. As the Estate of Lorraine E. Butler has not

been administered, thus beneficiaries not determined, the Defendants have no right to occupy the premises in any capacity. The Court finds they are to give access, and occupancy to the Claimants. The 2nd Defendant could be considered a trespasser.

32. The Claimants application for the Deed of Assent dated the 16th April 2021 transferring the estate's asset to Lorraine Butler be set aside is granted. Mrs. Butler acted in breach of Sir Michael Barnett's Order and his ruling advising that the Claimants are entitled to 50% of the estate. **Section 68 (1) (2) of the Probate and Administration of Estates Act** provides as follows:-

(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance, the court may, on the application of any creditor or other person interested –

(a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

(b) declare that the person, not being a purchaser in whom the property is vested, is a trustee for those purposes;

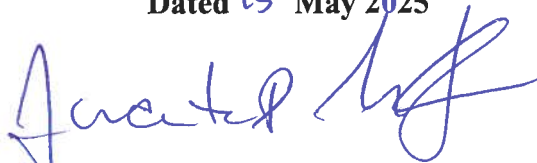
(c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act.

33. This Section gives authority to follow the property to the person who may have received it, in this case Lorraine Butler and now by extension her Estate, upon application by an interested person, [the Claimants] and to declare the person in whom the property is vested to be a trustee and to make a vesting order or appoint a person to convey in accordance with the Trustee Act.

34. I am satisfied that the Claimants are entitled to 50% of the estate of the late Alfred Benjamin Butler and they were deprived of same by the late Lorraine Butler by her execution of the said Deed of Assent.
35. The Court invited Counsel to address it on the authorities on waiver of irregularity and fresh steps. The Court received submissions from the 2nd Defendant well after the allotted time and none from the Claimants. The Court considered the submissions laid over.
36. Having considered the evidence and relevant law, I further find as follows:-
- I. The Deed of Assent dated 16th April 2021 between Lorraine Butler as Administrator and Lorraine Butler as beneficiary be revoked for the purpose of giving effect to the application of the persons interested, as it is void ab initio.
 - II. The Claimants are entitled to 50% of the Estate of Alfred Benjamin Butler and the Estate of Lorraine Butler is entitled to 50% of the said estate.
 - III. The 1st Claimant Apollo Benjamin Butler is appointed Trustee of the Assets of the Estate of Alfred Butler for the purpose of maintaining and distributing the assets to the beneficiaries of the estate, per Section 68 (2) (d) of the Probate and Administration of Estates Act.
 - IV. The Claimants are to have immediate access and occupation to the matrimonial home.
 - V. The 2nd Defendants waived all irregularities in these proceedings by taking the numerous fresh steps in the action. Thus the court has jurisdiction to hear this matter, the limitation period, manner of commencement of the proceedings or continuation under the 2009 action were all waived.
 - VI. The cost of this application to the Claimants to be paid from the 50% interest of the Estate of Lorraine Butler.

Dated 15 May 2025



Hon. Madam Justice Denise Lewis-Johnson MBE