

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Probate Division
2023/CLE/gen/00656

BETWEEN

BRENDA BABBS

Claimant

AND

ROGER WELLINGTON COX

First Defendant

AND

WARREN ODELL COX

Second Defendant

BY CONSOLIDATION
CLAIM NO. 2023/CLE/gen/00333

SHARMILLE McDONALD

Claimant

AND

ROGER WELLINGTON COX

First Defendant

AND

WARREN ODELL COX

Second Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mrs. Sonia A. Timothy-Knowles for Brenda Babbs
Mr. Romauld Ferreira for Sharmille McDonald
Mrs. Bridget B. Ward for the Defendants

Hearing Dates: 14 November, 2024

Submissions received: 17 February 2025; 10 March, 2025; 2 April, 2025

*Probate and Administration – Executors – Fiduciary duty to account- Trusts and Estates – Beneficiaries’
entitlement – Undivided share in residuary estate - Accounting – Obligation of executors - Delay in
Administration – Revocation proceedings*

RULING

DARVILLE GOMEZ, J

These proceedings arise out of disputes among siblings concerning the administration of the estate of their late father, Eleadon Elias Cox. Each of the Claimants, being beneficiaries under the deceased's Will, commenced separate actions against the Defendants, who are their brothers and the Executors named therein. Given the similarity of the issues raised and the fact that the same Defendants are involved, the actions were consolidated for determination by this Court. The central complaints concern the Defendants' failure to account, distribute rental proceeds, and convey the Claimants' undivided one-sixth share in the residuary estate.

Claim by Brenda Babbs

[1.] In action 2023/CLE/GEN/00656 the Claimant, Brenda Babbs sought the following reliefs in her Fixed Date Claim Form filed on 20 August, 2023 against her brothers, Roger Wellington Cox and Warren Odell Cox, the executors of the estate of their late father, Eleadon Elias Cox:

- (i) a revocation of the Grant of Probate dated 22nd day of May, 2017 pursuant to the Probate and Administration of Estates Rules, 2011 and under the inherent jurisdiction of the Court;
- (ii) a Grant of Probate to the Claimant in the estate of the Deceased;
- (iii) an injunction restraining the 1st and 2nd Defendants whether by themselves, their servants and/or agents or otherwise from selling, parting, leasing, changing, disposing of, liquidating, settling or otherwise interfering with any and or all assets of the Deceased;
- (iv) a true and proper accounting of all the assets of the Estate of the Deceased;
- (v) Damages;
- (vi) Costs;
- (vii) Any further and other relief that this Honourable Court deems just and fair.

Claim by Sharmille McDonald

[2.] In action 2023/CLE/GEN/00333 Sharmille McDonald commenced an action by Standard Claim Form filed on 4 May, 2023 against her brothers, Roger Wellington Cox and Warren Odell Cox who are the Executors of the estate of their late father, Eleadon Elias Cox for the following reliefs:

1. An injunction to restrain the Defendants from making any disposition whatsoever of Lots Nos.147 West Ridgeland, 12 Block 5 Englerston, 1 Block 29 Coconut Grove, 21 Knowles Plan, 2 Block 4 Regency Park, 29 Block 40 Englerston and 9,837 sq.ft. Plan 66 Acklins comprising the residuary estate of Eleadon Elias Cox;
2. A declaration that the Claimant is entitled to 1/6 share or 16.67% of the residuary estate of Eleadon Elias Cox pursuant to Section 29 of the Wills Act, 2002 Chapter 115;

3. A declaration that any dispositions whatsoever of the said Lots Nos. 147 West Ridgeland, 12 Block 5 Englerston, 1 Block 29 Coconut Grove, 21 Knowles Plan, 2 Block 4 Regency Park, 29 Block 40 Englerston and 9,837 sq.ft. Plan 66 Acklins comprising the residuary estate of Eleadon Elias Cox executed solely by the Defendants are void *ab initio*;
4. An account of the Defendants dealings with the said Lots Nos. 147 West Ridgeland, 12 Block 5 Englerston, 1 Block 29 Coconut Grove, 21 Knowles Plan, 2 Block 4 Regency Park, 29 Block 40 Englerston and 9,837 sq.ft. Plan 66 Acklins comprising the residuary estate of Eleadon Elias Cox;
5. Such other declarations, directions and inquiries as may be necessary;
6. Damages;
7. Aggravated and/or Special Damages
8. Further or other relief;
9. Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992 thereon; and
10. Costs.

[3.] Given the fact that both actions arose out of each of the Claimants' interest as beneficiaries under the Will of their late father, Eleadon Elias Cox ("Eleadon Cox") and the similarity of the reliefs sought, by Order of the Court, the actions were consolidated and proceeded to trial together.

[4.] The following are common ground between the parties per the Agreed Statement of Facts and Issues which I have summarized:

Agreed Facts

- (i) The Claimants and the Defendants are the children of Eleadon Cox who died testate on 8 February, 2016.
- (ii) By clause 4 of his Will dated 4 March, 2013 it is provided: "*I give all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of including any property over which I may have a general power of appointment or disposition by will to my children Roger Wellington Cox, Lionel Eleadon Cox, Brenda Babbs, Sharmille McDonald, Warren Odell Cox and Garvin Wardell Cox in fee simple and absolutely in equal shares as tenants in common*".
- (iii) Each of the beneficiaries are entitled to an undivided 1/6th share or 16.67% interest in the estate.
- (iv) The Oath of Executors dated 20 October, 2016 listed the following residuary real estate:
 - (a) Lot 147 located in a subdivision called West Ridgeland;
 - (b) Lot 12 Block 5 in a subdivision called Englerston;
 - (c) Lot 200 located in a subdivision called Sunshine Park Estate;
 - (d) Lot 13 Block 5 located in a subdivision called Englerston;
 - (e) Lot 1 Block 29 in a subdivision called Coconut Grove;

- (f) Property contained on Plan 66 in Acklins;
 - (g) Lot 21 in the Eastern District of the Island of New Providence conveyed to the deceased by Deed of Assent dated 16 December, 2003 recorded in Volume 8866 at pages 112 to 114;
 - (h) Lot 2 Block 4 in a subdivision called Regency Park;
 - (i) Lot 29 Block 40 in a subdivision called Englerston;
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- (v) Each of the properties are income generating or has the potential to generate income and the Defendants commenced the collection of rent following the death of their father.
 - (vi) A Grant of Probate was issued to the Defendants on 22 May 2017.
 - (vii) From the date of the control of the estate by the Defendants, Brenda Babbs received three payments from the Defendants and Sharmille McDonald only received two.
 - (viii) The Defendants have failed to provide an accounting of the proceeds collected from the rent, the bank accounts and to convey the 1/6th share of the estate to the Claimants.

Agreed Issues

- (i) Whether the Claimants have a 1/6th interest and are entitled to a full accounting of the estate of Eleadon Cox.
- (ii) Whether the Defendants have collected rental proceeds from the residuary estate, and how much funds have been collected in total by the Defendants from the residuary estate and total expenditures.
- (iii) Whether the Defendants collected funds from the bank accounts of Eleadon Cox, and how much funds were collected from the bank accounts of Eleadon Cox.
- (iv) Whether the Defendants intend to execute the conveyance to the Claimants of their 1/6th undivided interest, and when they will execute same.
- (v) Whether the Claimant is entitled to damages, aggravated and/or special damages, further, or other relief, interest and costs.

[5.] Eleadon Cox by his Will dated the 4th March, 2013, appointed the Defendants as Executors and gave his property as follows:

1. I appoint my sons Roger Wellington Cox and Warren Odell Cox to be the Executors thereof.
3. I give and devise to my three sons Warren Odell Cox, Lionel Eleadon Cox and Garvin Wardell Cox in fee simple in equal shares as tenants in common ALL THAT piece or parcel of land comprising 20,086.58 square feet situate immediately south of Carmichael Road and approximately 2 ¼ miles west of the junction of Carmichael and Bailou Hill Roads in the western district of the said Island of New Providence which said piece or parcel of land has such position shape marks boundaries and dimensions as are shown on the diagram or plan attached to an Indenture dated 30th May, 1983 made between Willard Nazi Moss and David Frank

Moss of the one part and me of the other part and recorded in the Registry of Records in Volume 3890 at pages 103 to 108 and is thereon coloured pink on the said diagram or plan.

4. I give all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of (including any property over which I may have a general power of appointment or disposition by Will) to my children Roger Wellington Cox, Lionel Eleadon Cox, Brenda Babbs, Sharmille McDonald, Warren Odell Cox and Garvin Wardell Cox in fee simple and absolutely in equal shares as tenants in common subject to and after the payment of my debts and funeral and testamentary expenses.

- [6.] Despite the issuance of the Grant of Probate in 2017, some six years had passed since the will had been probated and before the Claimants commenced their respective actions in 2023. To date, the estate has not been fully administered, and the assets have not been distributed by the Executors.
- [7.] In 2016, Janice Curry, Eunice Johnson and Derrick Johnson brought an action against the Defendants as executors of the estate of Eleadon Cox contesting the validity of the will of March, 2013. By a Judgment dated 21 September, 2022 the Honourable Madam Justice Indra Charles (as she then was) found on a balance of probabilities that the Will was signed by the deceased and executed in accordance with the Wills Act, viz., it was not a forgery (the “2022 Judgment”).
- [8.] The instant action is a consolidated action comprising the two proceedings commenced in 2023 by the respective Claimants.

Issues for determination

- [9.] The common reliefs being sought by both Claimants are as follows:
- (i) Injunctive relief restraining dealings with the estate property;
 - (ii) An accounting of the estate assets;
 - (iii) Damages and Costs;
 - (iv) Further/Other Relief
- [10.] In addition, the Claimant, Brenda Babbs, seeks the revocation of the Grant of Probate dated 22 May 2017 and the issuance of a fresh grant of Probate in favour of herself and the Claimant, Sharmille McDonald.
- [11.] On the basis of the Agreed Facts and Issues, it is pellucid that certain matters are not in dispute between the parties.
- [12.] It is common ground that the Claimants and Defendants are the children of the late Eleadon Cox, who died testate on 8 February 2016. By clause 4 of his Will dated 4 March 2013, the residuary estate was devised to his six children in equal shares as tenants in common. Accordingly, each beneficiary is entitled to an undivided one-sixth share (16.67%) in the residuary estate.

- [13.] It is further agreed that the residuary estate includes the properties listed in the Oath of Executors dated 20 October 2016, and that a Grant of Probate was issued to the Defendants on 22 May 2017. The Defendants have collected rental proceeds from the residuary properties and made limited distributions to the Claimants. The Defendants have not provided a full, reliable, and transparent accounting of the proceeds collected from rent, bank accounts, or other estate assets, nor have they conveyed the Claimants' respective one-sixth share.
- [14.] In light of these agreed facts, the Claimants' entitlement to a one-sixth share in the residuary estate is established and requires no further proof. Similarly, the obligation of executors to provide a true and proper accounting of the estate is a settled principle of law and does not require evidentiary proof.
- [15.] One of the Claimant's, Brenda Babbs seeks the revocation of the existing grant and the issuance of a fresh grant in both the Claimants' favour, alleging mismanagement, exclusion from estate affairs, and inequitable distributions. Therefore, the central issue before the Court is whether the Defendants have properly discharged their duties in the administration of the estate of the late Eleadon Cox, and, if not, what relief ought to be granted.
- [16.] The Claimants each testified, as did the Defendants, who also called Ms Charlton, their accountant. Their respective witness statements stood as their evidence-in-chief.

Preliminary Issue

- [17.] The Court must first address the form in which these proceedings have been brought. The executors have been sued in their personal capacity rather than in their capacity as personal representatives of the estate. It is well-established that claims concerning the administration of an estate should ordinarily be brought against executors in their representative capacity, since it is the office they hold, and not their personal status, that is engaged in the discharge of fiduciary duties.
- [18.] The older English authority of **Ingall v Moran [1944] KB 160** emphasised the strictness of this requirement, treating proceedings brought against the wrong capacity as a nullity. However, subsequent cases, including **Hilton v Sutton Steam Laundry [1946] KB 65** and **Re Estate of Fuld (No. 3) [1968] P 675**, demonstrate a more flexible approach, permitting amendment or treating the proceedings substantively as representative where the issues clearly concern estate administration.
- [19.] In the Commonwealth Caribbean, Courts have likewise favoured substance over form. In the Bahamian case of **Lockhart & Co v Kenneth Higgs 2013/CLE/gen/00134**, Senior Justice Charles (as she then was) acknowledged the distinction but treated the proceedings substantively against the defendants in their representative role where the issues concerned estate administration. Similarly, in **Bennett (Evon) v Ramdatt (Raymond) [2024] JMCA Civ 16**, the Jamaican Court of Appeal stressed that pleadings should not defeat substantive justice where the real issues were litigated.

- [20.] In the instant action, given that the trial has already been concluded, it is not procedurally possible at this stage to amend the pleadings to substitute the executors in their representative capacity. However, as the matter has proceeded to trial on the footing that the complaints concern the administration of the estate, in those circumstances, the Court will treat the proceedings as having been brought against the Defendants in their representative capacity as executors.
- [21.] In resolving this issue, the Court is guided by the overriding objectives of the Supreme Court Civil Procedure Rules, 2022 (the “CPR”) which require the Court to deal with cases justly, expeditiously, and proportionately, and to ensure that the parties are on equal footing. To allow technical defects in the pleadings to defeat substantive justice would run counter to those objectives.
- [22.] Accordingly, all relief granted in these proceedings shall bind the Defendants in their capacity as executors of the estate of Eleadon Cox, and any orders, including for costs, are to be understood as applying to them solely in their role as executors, and not in their personal capacity.

Claimants’ Evidence

Brenda Babbs

- [23.] Brenda Babbs, one of the Claimants and beneficiaries under the Will of her late father Eleadon Elias Cox, gave evidence that she resides in New Providence and is named in the Will dated 4 March 2013. She explained that her brothers, Roger Wellington Cox and Warren Odell Cox, are the Executors named in the Will, and that a Grant of Probate was issued to them on 22 May 2017. She further explained that the Will devised the residuary estate to six of the deceased’s children in equal shares, subject to debts and expenses. Brenda also noted that two of the beneficiaries suffer from disabilities: Lionel, who is blind, and Garvin, who is paralyzed.
- [24.] She described the residuary estate as comprising multiple properties in New Providence and a property in Acklins, many of which are rental accommodations or income-generating assets. Prior to her father’s death, she stated that she collected the rental income from these properties, and continued to do so until 2018, when tenants were instructed by the Defendants’ attorneys to pay rent to Warren Odell Cox. Brenda also recounted that litigation commenced in 2016 by three other siblings challenging the validity of the Will, and the Court ordered the status quo of the estate to be maintained. That action was dismissed in 2022.
- [25.] Since that dismissal, Brenda testified that she has not received any conveyance of her one-sixth share, nor any portion of the rental income, nor any accounting of the proceeds from the estate. She emphasized her prior management of the rental income as evidence of her ability to handle the estate’s financial affairs. On that basis, she sought the Court’s intervention to appoint herself and her sister, Sharmille McDonald, as Executors. She concluded that she has been deprived of her rightful share of property and income, and has suffered loss and damage as a result.

Sharmille McDonald

- [26.] The Court also heard the evidence of Sharmille McDonald, the other Claimant and a beneficiary under the Will of her late father, Eleadon Elias Cox. She confirmed that the Defendants, Roger Wellington Cox and Warren Odell Cox, are her brothers and the Executors named in the Will. She reiterated that, by clause 4 of the Will dated 4 March 2013, the residuary estate was devised to six of the deceased's children in equal shares as tenants in common, each entitled to an undivided one-sixth interest. She testified that her father died on 8 February 2016, and that a Grant of Probate was issued to the Defendants on 22 May 2017.
- [27.] Ms. McDonald stated that shortly before his death her father sold his truck for \$8,000 and instructed her to deposit the proceeds into his account at RBC/FINCO Robinson Road. At that time, she observed a balance of more than \$120,000 in the account. She asked the Court to direct the Defendants to disclose all bank account balances and statements from the date of death to the present. She also referred to the Oath of Executors dated 20 October 2016, which listed several properties in New Providence and Acklins as part of the residuary estate. She emphasized that these properties are income-generating and that the Defendants have collected rental income since her father's death.
- [28.] She provided detailed evidence of the potential rental income from the various properties, including duplexes, commercial units, efficiency apartments, and houses, estimating that the total monthly rental income could exceed \$19,000 and that arrears over the period since her father's death could amount to more than \$1.8 million. She denied allegations in the Defence that she had collected rental income from certain properties or received a bank draft of \$2,000, but acknowledged receiving two payments of \$10,000 from the Defendants—one shortly after her father's death and another in 2022. She testified that despite repeated requests she has not been provided with any proper accounting of the estate, nor with her portion of the rental income or a deed of assent.
- [29.] Ms. McDonald asked the Court to order the Defendants to provide a full accounting of the estate, including what is owed for the occupation of estate properties by her siblings and the Defendants themselves, who reside in or operate businesses from estate properties without paying rent. She suggested that rental debts be offset against their shares in the estate. She also requested that monthly receipts and quarterly statements of revenue and expenditure be provided, and that distributions of rental proceeds be made quarterly rather than annually, given the needs of the beneficiaries. She expressed concern that the rental properties are not being properly maintained and asked to be included in maintenance decisions. She concluded that the Defendants' failure to account or distribute income has eroded her trust and confidence in them, and she fears that without an order of the Court they will not fulfill their obligations as Executors.

Defendants' Evidence

Roger Wellington Cox and Warren Odell Cox

- [30.] The Court heard the evidence of Roger Wellington Cox and Warren Odell Cox, both Defendants and Executors named in the Will of their late father, Eleadon Elias Cox. They confirmed that their father died on 8 February 2016, and that his Will dated 4 March 2013 was admitted to probate, with a Grant of Probate issued to them on 22 May 2017. They explained that following the grant, proceedings were commenced in the Supreme Court by other siblings seeking to have the Grant revoked. That action remained pending until judgment was delivered on 21 September 2022, and during that time the estate could not be completed.
- [31.] They testified that in July 2023, notices were published in the Nassau Guardian inviting claims against the estate, which expired on 5 August 2023. They stated that the only response was a letter alleging a claim, but no supporting documentation was produced. They further stated that a Deed of Assent was executed on 21 November 2023, but has not yet been stamped or recorded because assessment numbers for all properties are required before presentation to Inland Revenue, and some numbers remain outstanding.
- [32.] Both Executors explained that they began collecting rental income from the estate properties in or around 2018. Prior to that, their sisters, Sharmille McDonald and Brenda Babb, had collected rent for a period following their father's death. They stated that the sums collected by them have been applied to the maintenance and upkeep of the estate properties, and that whenever funds were available for distribution, all beneficiaries received equal portions. They emphasized that it was not their intention to deprive any beneficiary of their inheritance.

Laketha Charlton

- [33.] Laketha R. Charlton is an accountant and auditor employed at the Office of the Auditor General of The Bahamas. She holds a Bachelor of Science degree in Accounts and Business from Lee University. In March 2024, she was approached by the defendants, Roger and Warren Cox, to prepare a financial report on the estate of the late Mr. Eleadon Cox. Ms. Charlton produced a report dated 8 April 2024 based on receipts provided to her.
- [34.] Ms. Charlton was careful to clarify the scope of her work. She explained that her exercise was a review rather than a full audit, and accordingly she did not express an audit opinion. Her assurance was limited: she stated that nothing came to her attention to suggest that the documents were materially misstated, but she emphasized that her findings were constrained by the quality and completeness of the records. In particular, she noted that many receipts were illegible and that not all rental receipt books were presented for inspection, meaning that the figures she reported could not be treated as a definitive account of the estate's finances and that she could not attribute the invoices and receipts to specific properties.

Law, Analysis and Discussion

- [35.] It is undisputed that the Claimants and Defendants are the children of the late Eleadon Elias Cox, who died testate on 8 February 2016, and that by clause 4 of his Will dated 4 March 2013 the residuary estate was devised to six of his children in equal shares as tenants in common. Each beneficiary is therefore entitled to an undivided one-sixth interest in the residuary estate. That entitlement is not disputed by the Defendants and requires no further proof.

Executors duty to account

- [36.] The duty to account is inseparable from the office of executor. As early as **Re Stevens [1898] 1 Ch 162**, the Court held that executors must always be able to demonstrate how they have dealt with estate assets. In **Re Londonderry's Settlement [1965] Ch 918**, it was confirmed that beneficiaries are entitled to sufficient information to verify that the estate is being properly managed.

Evidence

- [37.] Brenda Babbs presented herself as a long-standing manager of her father's affairs, having collected rent for many years both before and after his death. Her evidence was detailed in respect of her own role, but she was clearly aggrieved at her exclusion from estate benefits after 2018. Sharmille McDonald's evidence was narrower, focusing on her personal knowledge of her late father's bank account and the Acklins property, but she admitted she never collected rent herself. The Claimants both testified that they have not received conveyances of their one-sixth share, nor any proper accounting of the estate, and that they have been deprived of rental income from the residuary properties. They emphasised that the Defendants have collected rents since 2018, while certain siblings including the Defendants themselves occupy estate properties without paying rent. In particular, Ms. McDonald provided detailed evidence of the potential rental income from the properties, estimating arrears in excess of \$1.8 million, and requested that the Court order quarterly distributions and accounting. Both Claimants expressed loss of confidence in the Defendants' administration of the estate and sought their replacement as Executors.
- [38.] The Defendants' evidence, while providing a general account of the estate's properties and management, revealed material deficiencies. Roger Cox gave the most detailed breakdown of the estate's properties, though his inability to provide precise figures for income and expenses revealed gaps in record-keeping. Warren Cox's evidence largely corroborated Roger's account, adding details about rent collection and distributions, but his justification for withholding funds from Brenda reflected the existence of ongoing familial disputes affecting distributions. Therefore, the Court finds that the Defendants' record-keeping has been inadequate and lacks the degree of transparency expected of personal representatives.

[39.] The Accountant's evidence was impartial but limited, as her report, based solely on receipts provided, many of which were faded or incomplete, confirms that rental income was generated and that expenses and distributions were made. However, she was unable to verify the completeness of the records or attribute receipts to specific properties. Accordingly, while her report is reliable within its stated limits, it cannot be treated as a comprehensive accounting of the estate.

Defendants' Position

[40.] The Defendants do not deny their obligation to account.

[41.] Rather, in their Defence they explained that administration of the estate has been hindered by several factors including the earlier proceedings (2016/CLE/gen/01465 commenced by Janice Curry, Eunice Johnson and Derrick Johnson) challenging the validity of the Will, which only concluded with judgment delivered on 21 September 2022; their subsequent change of Attorneys, at which point they learned of the requirement to publish a notice to creditors which has since been placed in the newspaper; and the need to await the expiry of that notice on 25 August 2023 before giving a proper accounting of the residuary estate.

[42.] Further, the Defendants in their evidence acknowledged that they began collecting rental income in or around 2018, whereas prior to that the Claimants had collected the rents. They stated that the sums collected have been applied to the upkeep of the properties and that, whenever funds are available, distributions are made to all beneficiaries in equal portions. They emphasised that it has never been their intention to deprive any beneficiary of his or her inheritance, and pointed to the delays caused by the revocation proceedings, which were not resolved until September 2022, and to administrative requirements such as obtaining assessment numbers before the Deed of Assent could be stamped and recorded. While the Court accepts that these factors contributed to delay, they do not excuse the absence of a proper and transparent accounting.

Estate Assets and Administration

[43.] The estate comprises multiple parcels of real property, a small boat, and at least one bank account. One property is located in Acklins and various properties are located across New Providence, in the areas of: (i) Key West Street; (ii) Sunshine Park; (iii) Robinson Road; (iii) Podoleo Street; (iv) Sixth Street; (v) West Ridgeland; (vi) Kemp Road; and (vii) Augusta Street (though the latter was not probated due to missing documents and its status as Crown land). Several of these properties are income-generating, while others are vacant or in need of repair. The evidence established that rental income has been collected, but the extent of that income and its application remain unclear due to deficient record-keeping.

Distributions

- [44.] The distributions made to beneficiaries have been inconsistent in both timing and amount. Brenda Babbs received two payments of \$5,000 each, and later \$14,000, but was denied a further \$10,000 on the basis that she had collected rent at Augusta Street. Sharmille McDonald received two payments of \$10,000 - one shortly after her father's death and another in 2022. She also later refused a \$2,000 draft. Roger Cox acknowledged receiving \$27,000, though he claimed part was for maintenance and construction. Warren Cox confirmed receiving \$24,000. While the Executors seek to justify this disparity by reference to alleged prior rent collection by Ms. Babbs and other factors, the absence of proper records makes it difficult to verify the basis upon which distributions were calculated.
- [45.] The overall picture that emerges is one of informal and unsystematic administration. While the Defendants have taken steps to manage the estate, including collecting rent and undertaking maintenance, they have failed to maintain proper records or to provide beneficiaries with a clear account of their stewardship.
- [46.] Ms. Charlton's report provides some structure to the financial picture, indicating that substantial rental income was received, significant expenses incurred, and distributions were made to beneficiaries. She recorded rental income between July 2019 and October 2023 amounting to approximately \$293,438. She also documented annual operating expenses ranging from \$17,000 to \$43,000, covering utilities, insurance, repairs, and payments to various suppliers. In addition, Ms. Charlton identified payments made to beneficiaries totaling \$133,000, with disbursements to Brenda Babbs, Garvin Cox, Warren Cox, Lionel Cox, Roger Cox, and Sharmille McDonald. She further noted that legal fees paid by the executors between 2019 and 2023 amounted to \$32,000. However, for the reasons already stated, the report does not cure the underlying deficiencies in the estate's financial records.
- [47.] The Court therefore finds that, although the estate has been actively managed, the Defendants have failed to discharge their duty to account in a manner consistent with their fiduciary obligations.

Revocation of the Grant of Probate

- [48.] Against this backdrop, Ms. Babbs seeks the revocation of the existing grant and the issuance of a fresh grant in the Claimants' favour. However, the revocation of a grant is a serious remedy, available only where "just cause" is established—such as a defect in the proceedings to obtain the grant, appointment of a person without proper entitlement, false evidence, or the subsequent discovery of a valid will.
- [49.] Pursuant to section 29 of the Probate and Administration of Estates Act, 2011 the Court may revoke a grant of representation if: (a) the grant ought not to have been made, or (b) the grant contains an error.

- [50.] The authorities illustrate the limited scope of this jurisdiction. The most recent and most directly relevant decision is **June Ashimola (1) v Ruth Samuel (1) [2025] EWHC 502 (Ch)**, which confirmed the court’s jurisdiction to revoke a grant where it ought not to have been made. The decision gives two concrete examples. First, if the person said to be deceased is actually alive, the factual premise for probate fails and the grant must be revoked. Second, revocation is justified where the grant was procured through false, forged, or concocted documents.
- [51.] A second modern case on this point is **Vaccianna v Herod [2005] EWHC 711 (Ch)** where the grant of probate was revoked because the document admitted to probate was not in truth signed by the deceased, so it was not a valid testamentary instrument. That falls squarely within the statutory idea that the grant should not have been made. Therefore, where the will itself is invalid, any grant founded on it is vulnerable to revocation, **Vaccianna v Herod [2005] EWHC 711 (Ch)**.
- [52.] In the present case, however, none of the circumstances identified in the authorities or contemplated by section 29 of the Probate and Administration of Estates Act, 2011 arise. There is no evidence of defect in the proceedings, want of entitlement, false or forged documentation, or invalidity of the testamentary instrument. Accordingly, the Court is not satisfied that “just cause” has been established to warrant the extraordinary remedy of revocation, and the existing grant must therefore stand.

Removal of Executors

- [53.] The Court must next consider whether the Defendants should be removed as executors. The applicable principles are set out in **Letterstedt v Broers (1884) 9 App Cas 371**, which emphasizes that the Court must consider whether confidence between beneficiaries and executors has broken down to the point that administration is irreparably jeopardized.
- [54.] The evidence by the Claimants and the accountant demonstrated the Defendants’ disorganization, lack of transparency, rent-free occupation by them and other beneficiaries in the estate properties, in addition to their inability to maintain proper books and records. Further, the deficiencies highlighted in the Charlton report demonstrated the broader problem: the estate’s financial records are not maintained in a manner that permits reliable accounting or transparent administration.
- [55.] It is obvious to the Court that the administration of an estate comprising several properties including income-producing ones has proven too onerous for the Defendants. The administration of these assets requires some proficiency or competency in record-keeping and accounting – skill sets that the Defendants do not appear to possess. The burden of administration has become in my judgment manifestly beyond their capabilities.

[56.] The Court is therefore confronted with the question of what course to take where it is evident that the executors are not equal to the task of administering the estate, and no clear alternative presents itself. Even if the Court were minded to add, or even substitute the Claimants as personal representatives, this would risk compounding the evident strains in the parties' relationship and could lead to continued disagreement in the administration of the estate.

Conclusion

[57.] In such circumstances where the estate's affairs remain unclear and the relationships between the beneficiaries are strained, the Court is not satisfied that removal at this stage would serve the best interests of the estate.

[58.] The Court therefore considers that the appropriate course is not removal, but the imposition of strict supervisory measures to ensure proper administration going forward.

[59.] In relation to costs, the Court has determined that the costs of these proceedings shall be borne by the estate of the deceased. In order to ensure fairness and uniformity in the treatment of the respective costs, each party is directed to file and serve a statement of costs for assessment by the Court. Upon receipt of these statements, the Court will undertake an assessment to determine the appropriate quantum of costs payable out of the estate, ensuring that the awards are consistent, proportionate, and reflective of the work reasonably undertaken in the matter.

[60.] Accordingly, I make the following orders:

- (i) The application to revoke the Grant of Probate issued on 22 May 2017 in respect of the estate of Eleadon Elias Cox is refused.
- (ii) The application for the issuance of a new Grant of Probate in favour of the Claimants is also refused.
- (iii) Roger Wellington Cox and Warren Odell Cox shall remain in office as executors of the Estate.
- (iv) It is declared that each of the Claimants are each beneficially entitled to an undivided one-sixth (1/6) share in the residuary estate of the late Eleadon Elias Cox, subject to the due payment of debts, liabilities, and expenses of administration.
- (v) The claims for damages, including aggravated damages and special damages, are refused.

Directions for Administration of the Estate

- (vi). Until further order of the Court, the Defendants, in their capacity as executors, are restrained from selling, transferring, charging, encumbering, dissipating, or otherwise

disposing of any asset forming part of the estate of Eleadon Elias Cox, save for the payment of lawful estate debts and expenses, or pursuant to further order of the Court.

- (vii). Within sixty (60) days of the date of this Order, the Executors shall file with the Court and circulate to all beneficiaries a full inventory of the estate's assets, including (i) all real and personal property comprised in the estate; (ii) all monies received on behalf of the estate; (iii) all payments made out of estate funds; (iv) all distributions, transfers, or dispositions already effected; (v) all liabilities paid or said to remain outstanding; and (vi) the present status of each estate asset not yet realized or distributed.
- (viii). Thereafter, the Executors shall file with the Court and circulate to all beneficiaries detailed accounts of the estate's administration every six (6) months, setting out all receipts, expenditures, and distributions. Such accounts shall be supported by proper records and documentation sufficient to permit transparent review.
- (ix). The Executors shall ensure that all estate funds are deposited into a designated estate bank account in the name of the estate. No personal or third-party accounts are used for estate monies. Withdrawals or payments out of the estate account shall be made only for proper estate purposes, supported by vouchers or invoices, and recorded in the monthly accounting. The Executors shall not make any distribution to beneficiaries without prior leave of the Court.
- (x). Payments for routine expenses necessary for the preservation of estate assets, such as property maintenance, insurance, and taxes, may be paid from the estate account. Any extraordinary expenditure shall require either the consent of all beneficiaries or the prior approval of the Court.
- (xi). Costs of the parties to be paid out of the Estate to be assessed by the Court.
- (xii). The parties shall have liberty to apply.

Dated the 29th day of April, 2026



Camille Darville Gomez
Justice of the Supreme Court