

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2024/CLE/gen/00468

IN THE MATTER OF Section 3 of the Judicial Trustees Act

AND IN THE MATTER OF the Estate of Cecelia Culmer a.k.a. Annie Cecelia Culmer late of #
4 Shady Tree Street, Culmersville in the Eastern District of the Island of New Providence, The
Bahamas, Deceased

GAY FRANCINE CECILE PINDER

Claimant

AND

ALFRED N. CULMER
(Executor of the Estate of Walter Culmer)

1st Defendant

AND

THE ESTATE OF KING BETHEL

2nd Defendant

AND

RANDOLPH STANLEY CULMER

and

ANDREA IRIS ADDERLEY
(Executors of the Estate of Alfred Nicholas Culmer)

3rd Defendant

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Ms Judith Smith of Counsel for the Claimant
Mr Lessiah Rolle of Counsel for the 2nd Defendant

Hearing: On the papers

DECISION

FITZCHARLES, J.

Application

1. This brief Ruling concerns an application by Anthony Mark Bethel (“**Mr Bethel**”), a son of the late Reginald Bernard Bethel aka King Bethel (deceased) whose estate is joined as the 2nd Defendant in this action. Mr Bethel applies to strike out an application brought by the Claimant, Dr Gay Francine Cecile Pinder, for the appointment of a judicial trustee in the estate of her grandmother, Cecelia Culmer aka Annie Cecilia Culmer (the “**Strike Out application**”).
2. The Strike Out application is made by Notice of Application filed on 5 May 2025 and supported by the 1st Affidavit of Anthony Mark Bethel also filed on 5 May 2025 (“Bethel 1”). The written Skeleton Arguments for Anthony Mark Bethel have also been considered.
3. The main action was commenced by Dr Pinder (the “**Claimant**” or “**Dr Pinder**”) for the appointment of a judicial trustee for the administration of her grandmother’s estate (the “**Judicial Trustee application**”), pursuant to **Section 3(a)** of the **Judicial Trustees Act, Chapter 58, Statute Laws of The Bahamas**.
4. In considering the Strike Out application, the Court has also perused the documents in the related judicial trustee application to understand the full background and basis for the application. The Court has read an Originating Application filed on 28 May 2024, the Affidavit of Dr Gay Francine Pinder (the “**Pinder Affidavit**”) filed on 29 May 2024, the Consent of Attorney filed on 29 May 2024, a Notice of Application filed on 4 June 2024, the Affidavit of Andrea Iris Adderley filed on 1 May 2025 (the “**Adderley Affidavit**”), the Affidavit of Gertrude Williams filed on 28 April 2025 (“**Williams 1**”) and the Second Affidavit of Gertrude Williams filed on 5 May 2025 (“**Williams 2**”). The Court has also considered the written Submissions of the Claimant.

Background

5. There appears to be no contest of the following facts.
6. The late Annie Cecelia Culmer had four (4) children, namely Marina Pinder (her daughter) and sons, Walter Culmer, Alfred Culmer and Reginald Bernard Bethel aka King Bethel.
7. On 13 June 1994, the late Annie Cecelia Culmer died testate appointing her daughter, Marina Pinder, as her sole Executrix. By her Will dated 20 August 1990, Annie Cecelia Culmer gave, amongst others, the following devises:
 - (1) property and dwelling house thereon at Culmersville Subdivision to her daughter, Marina Pinder;

(2) small house on property at Culmersville Subdivision to her son, Walter Culmer, for life and, in remainder, to her daughter, Marina Pinder;

(3) property at Wulff Road to her three (3) sons, Walter Culmer, Alfred Culmer and King Bethel as tenants in common; and

(4) the residual estate to all of her said children in equal shares as tenants in common.

8. The late Marina Pinder did not submit the Will of her mother, Annie Cecelia Culmer, for a grant of probate. On 10 February 2008, the late Marina Pinder died testate appointing the Claimant and her son, Warren Andrew Pinder, as executors of her Will dated 23 February 2007.

9. The children of Annie Cecelia Culmer are all deceased. The Estate of Marina Pinder received a grant of probate on 22 December 2009. Walter Culmer died on 23 March 2004, leaving a Will for which a grant of probate was received on 11 October 2006. Alfred Culmer died testate on 3 October 2021 and his estate received a grant of probate on 18 September 2023. King Bethel died intestate on 27 August 2013, survived by 8 of his 9 children. There has been no report in Bethel 1 filed on 5 May 2025 of any grant being obtained for the estate of King Bethel.

10. The Claimant, Dr Pinder, is a beneficiary of the estate of Marina Pinder (her mother). Further, one of the properties of her grandmother, which devolved to Marina Pinder also devolved to the Claimant. The Claimant is also Executrix of the estate of the late Marina Pinder.

11. Dr Pinder avers that a contentious relationship has developed amongst her and Kirkland Culmer and his son, Kaiwan Culmer (who are descendants of the late Walter Culmer) in relation to the property devised to Walter Culmer for his life with remainder to Dr Pinder (the “disputed property”). The Claimant avers that Kirkland Culmer entered the disputed property and commenced unauthorized work on the house. Additionally, the Claimant avers that Kirkland Culmer has invited other persons to dwell on the disputed property, despite being served with a letter demanding that he cease and desist from entering the disputed property. Dr Pinder also applied to the Magistrate’s Court for an eviction notice and posted ‘No Trespassing’ signs on the disputed property, which she alleges were removed by Kirkland Culmer.

12. The Claimant reports that it is evident that based on the conduct of the descendants of her grandmother they are unable to work together to administer the estate and some seem to be content to allow the uncertain state of affairs to continue although they are due to receive property from her estate. She states that the process of clearing off persons and/or locating them to be cited to refuse or accept the probate is likely to cause the administration to be unwieldy. Moreover, the Claimant is concerned that with the contentions that exist, the cost of the process could outweigh the value of the assets of the estate.

13. Given these concerns, the Claimant states that she believes it would be better and fairer to all concerned for a judicial trustee to be appointed in the estate of Annie Cecelia Culmer and to conduct its due administration. That is the application which Mr Bethel seeks to have struck out by this Court.

Submissions

Defendant

14. Counsel for Mr Bethel, Mr Lessiah Rolle, argues in summary that the application of the Claimant ought to be struck out for the following reasons:

- (1) the Claimant has no locus standi to bring this matter because, on the face of the Originating Application, she brings it in her personal capacity the “locus standi argument”);
- (2) the Estate of King Bethel is not a fit and proper party to the action;
- (3) the Claimant is debarred from proceeding beyond commencement of a proper action until she moves the Court to appoint a personal representative for the ‘Estate of King Bethel’ pursuant to **CPR 21.7**;
- (4) the matter is a contentious probate matter and therefore ought to have been brought by Fixed Date Claim Form as mandated by **CPR 63.3(1)**. As it has been commenced by Originating Application it is null and void.

Claimant

15. Counsel for the Claimant, Ms Judith Smith, responds to the arguments advanced by Mr Bethel in the following summarized points:

- (1) Pursuant to the Judicial Trustees Act the Claimant has locus standi to bring this application as she is likely to be a beneficiary of the estate.
- (2) As a beneficiary of the Estate of Cecelia Culmer the Estate of King Bethel was included, but if they choose not to participate there is no sanction against them. **CPR 8.5** ought to apply by which a claim will not fail by adding or failing to add parties.
- (3) The Court ought not to strike out the Originating Application and Notice of Application and award costs to Mr Bethel. The submission that this is a ‘contentious probate’ is incorrect. There has been no application to the Probate Division. Rather, the chain of representation is broken (see **Section 48(4)** of the **Probate and Administration of Estates Act, CH 108**). There will be an application for Letters of Administration with the Will Annexed. A judicial trustee may administer the estate.

- (4) The Court ought not to strike out the claim because it has merit and a realistic prospect of success.

Discussion and Disposition

Nature of the Application

16. According to **CPR 63.3**, “[a] person who seeks to begin a contentious probate action must do so by a fixed date claim form and statement of claim issued out of the Probate Registry...”.

17. Mr Rolle argues that the application for the appointment of a judicial trustee is a ‘contentious probate’ claim. As such, it ought to be in compliance with **CPR 63.3**. It is not, given that the Claimant brought the application by way of an Originating Application and Notice of Application. Counsel therefore contends that the application must be struck out for failure to bring it in the correct form.

18. **Section 2 of the Probate and Administration of Estates Act, Ch 108, Statute Laws of The Bahamas** provides:

“In this Act,
‘contentious or solemn form probate proceedings’ means an action for –

- “(a) the grant of probate of a will, or letters of administration of the estate of a deceased person;
- (b) the revocation of such a grant;
- (c) 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.”

19. On a reading of this definition, the application of the Claimant which is before the Court has none of the elements which comprise contentious probate proceedings. Simply, the application for a judicial trustee is not in the nature contended in the Notice of Application filed by Mr Bethel. The Claimant’s application does not involve a prayer to the Probate Division, nor does it seek a grant or revocation of a grant. Further, it does not seek a decree for or against an alleged will. One of those reliefs may well be later sought by an appropriate person.

20. When the Court hears the judicial trustee application, the parties will be able to tender submissions as to the appropriateness of that process for the actions contemplated by the Claimant. Generally, a judicial trustee, duly appointed, may ensure that an estate is properly administered. Usually when such appointment is made, it is to replace one who is removed from the trusteeship or executorship. (See for example, **Kemp v Kemp et al (Executor of the Late Audley Kemp Sr** [2014] 2 BHS J No. 12). However, while the appointment of a judicial trustee may arise in the context of concerns about the administration of an estate, it is a procedural remedy rather than one that can be categorized as contentious probate. One of the issues which will arise for consideration at the hearing of the Claimant’s application is in relation to the steps which must be taken when the chain of representation is broken and who is the appropriate person to make the requisite application(s).

21. In the circumstances, the Court does not accept that this application is a contentious probate application, the form of which must adhere to **CPR 63.3**. The argument fails to support a strike out of the Claimant's application.

Standing to Bring the Application

22. The argument put forth by Counsel for Mr Bethel is that the Claimant has no locus standi to bring the application as she brings it in her personal capacity. The Claimant applies pursuant to the **Judicial Trustees Act, Ch 58**. According to **Section 3** of the **Judicial Trustees Act**:

“3. (1) Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee), to be a trustee of that trust, either jointly or with any other person or as a sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

(2) The administration of the property of a deceased, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this Act...”.

23. On the facts which are uncontested, the Claimant is a beneficiary of certain property passed to her mother by the Will of her grandmother and to the Claimant by the Will of her mother. She is also the executor of her mother's Will, and her mother who is deceased was named as an executor of the Claimant's grandmother's Will. The Judicial Trustees Act confers capacity to apply upon a trustee or beneficiary of a trust. A trust includes administration of the property of a deceased person regardless of whether the deceased person died with or without a will.

24. As a beneficiary, there is no lack of standing for the Claimant to apply to the Court for the appointment of a judicial trustee pursuant to the Judicial Trustees Act. Resultantly, the argument that the Claimant lacks standing to apply for the appointment of a judicial trustee fails and is not a basis upon which an argument to strike out the Claimant's application can be sustained. Moreover, if there is any misdescription in the title of the action as regards the capacity of the Claimant, the same may more justly be redressed in amendment rather than a strike out.

An Estate is Not a Party

25. The next argument advanced by Mr Rolle, Counsel for Mr Bethel, is that an 'estate' of a deceased person is not a proper party. It is contended that as the application for the appointment of a judicial trustee was brought against the 'Estate of King Bethel', the application is a nullity and ought to be struck out.

26. The first question in relation to this argument is whether the 'Estate' of a deceased person is a proper party. Pursuant to **Section 2** of the **Probate and Administration of Estates Act**, "estate" refers simply to real and personal estate. Typically, it encompasses the real and personal property, rights and liabilities left by a person after his death. This definition does not suggest that there is legal personality in an estate of a deceased person for the purposes of constituting a proper party to a legal action.

27. In England, CPR 19.8(2) expressly permits a claim to be brought against ‘the estate of a deceased’ in cases where a grant of probate or administration has not been made. In other words, the English rules expressly state that after a person dies, a claim may be commenced against his estate. However, the rule also stipulates that the claimant must apply to the court for a person to represent the estate.

28. On the issue of whether an ‘estate’ of a deceased person is a proper party with legal capacity, remarks made by the English Court of Appeal in **Piggott v Aulton (deceased)** [2003] All ER (D) 271 (albeit the facts are distinguishable) assist. There, the court concluded:

“19. ...The analogy which Mr Moat seeks to draw between an order under CPR 19.8(2) and an order for alternative service is not a good one because the former goes to the essence of the action whereas the latter does not. There had to be an effective party against whom a dispute could be determined. The estate of a deceased person is not such a party... Like the estate of a deceased person...[an unincorporated person] has no legal persona.

“20. ...Even today, possession proceedings can be brought against “persons unknown” (CPR 55.3(4)). However, in this instance CPR55 makes specific provision to enable such proceedings to be served on such persons and judgment obtained. In those cases, therefore, an action may be properly constituted without those persons being identified. There is no such parallel in the case of proceedings against a deceased person’s estate. A real defendant, having legal personality and capable of identification, is required.”

(Emphasis added).

29. Based upon the analysis in **Aulton** the legal persona of a person comes to an end on his death and his estate is not imbued with the same legal persona. There is no differing pronouncement of the law in The Bahamas from this principle. In fact, adherence to the principle that an estate is not an effective party against whom an action may be brought or maintained would explain the purpose of the mechanism in **CPR 21.7** by which the Court may rectify the lack of a party upon the death of a litigant. **CPR 21.7** and **CPR 21.8** provide in part:

“21.7 Proceedings against estate of a deceased person

“(1) If in any proceedings it appears that a deceased person was interested in the proceedings, but the deceased person has no personal representatives, the Court may make an order appointing someone to represent the deceased person’s estate for the purpose of the proceedings.

...

“(3) The Court may make such an order with or without an application.

“(4) Until the Court has appointed someone to represent the deceased person’s estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.”

“21.8 Power of the Court to give directions to enable proceedings to be carried on after a party’s death

“(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.”

30. In The Bahamas, we look to **CPR 21.7** and **CPR 21.8**. Unlike the English rules, these contain no express provision which enables a claimant, post the death of a person who is not already a defendant to a lawsuit, to bring an action against ‘the estate of’ the deceased person.

31. In neither set of rules (English or Bahamian) does it appear that the rules purport to confer legal personality on the ‘estate’, which is a matter of substantive law. Rather, they provide a procedural mechanism to deal with cases in which a party is wanting in an action where a previously joined party, or one contemplated to be joined in an action, dies.

32. Mr Rolle relied upon the case of **Elleta McCrobie-Walker (Administratrix of the Estate of Violet McCrobie v Elaine McCrobie and Francella McLeod-Huggins (Administratrix of the Estate of Laban McLeod))** [2021] JMSC Civ 175. In that case, following the death of a person, the claimant brought a claim against his estate without first applying for a representative to be named in the action for the deceased’s estate in compliance with the Jamaican Civil Procedure Rules, CPR 21.7 (similarly worded to the Bahamian CPR 21.7). In that case, Master C Thomas (AG), after opining that the English rules “left no room for doubt” that a claim against a deceased’s estate could be commenced before the appointment of a representative of that estate, stated:

“[20] ...In the case of rule 21.7, there are no such provisions. It is my view, therefore, that rule 21.7(1) does not empower a court to appoint a person as the representative of a deceased person’s estate to operate retrospectively. Rule 21.7(1) is therefore confined to circumstances where proceedings were commenced against a defendant while he was alive and at some stage during the proceedings, the defendant dies. I find support for this conclusion in *Daneshia Artwell v Advantage General Insurance Company & anor*; *Kavin Reid v Advantage General Insurance Company & anor* [2020] JMSC Civ 119...

“[21] I am also of the view that given the legal principles as to the status of the natural personality of the deceased, the status of the legal personality of his estate and the requirement that there must be a person recognizable in law against whom action can be taken, rule 21.7 could not empower the court to make an order for the appointment of a representative of the estate of the deceased defendant after the claim was filed in circumstances where the deceased died prior to the commencement of the claim...To do so, in my view, would empower the court to endorse the bringing of an action against a non-existent, non-recognizable person in law, which would run counter to the well-established principle that a claim brought against a non-existent person in law is a nullity...[I]t would amount to the procedural rules of court overriding or attempting to alter the substantive law...”.

“[23] It is also my view that interpreting rule 21.7 in the way that I have does not render rule 21.8 of the CPR unnecessary as rule 21.8 is much broader than rule 21.7 in that rule 21.8 empowers the court to give directions which may well include but are not limited to an order similar to that which may be given under rule 21.7; and it may be invoked or utilized upon the death of the defendant as well as the death of the claimant.”

33. While this Court is not bound to follow **McCrobie**, it is persuasive. More importantly, I see the force in the position that the substantive law dictates that an estate possesses no legal persona; as such, bringing an action against ‘the Estate of XY’ is an action against a non-entity. Further, if a rule of procedure does not expressly spell out that such an action is permitted as the English CPR 19.8(2) does, it is the better view that the CPR does not sanction the bringing of an

action against a non-existent person. Rather, when an action is brought or contemplated to be brought after the death of a prospective defendant, **CPR 21.7** permits the Court with or without an application before it, to appoint someone to represent that deceased person's estate before joining that party to the action for the purpose of bringing the action against the deceased person's estate. This interpretation seems more harmonious with the substantive law.

34. As those are my views, the result is that the purported claim against the Estate of King Bethel suffers the defect of naming an unrecognized person in law and, as such, is invalid. However, this does not support a complete strike out of this action. There are other properly named and constituted defendants in this action. Therefore, I will not strike out the entire action. Instead, I consider that there is no valid action against the Estate of King Bethel, which lacks legal persona.

35. In order for the action to be brought against and include those persons interested in the Estate of King Bethel, someone must be appointed to represent that Estate before joinder. I also consider that Anthony Mark Bethel has demonstrated a willingness to act on behalf of the Estate of King Bethel, to which there appears to be no objection.

36. In light of the above and based upon my findings, I make the following order:

- (1) the Strike Out application succeeds on the sole ground that the 'Estate of King Bethel' is not a proper party;
- (2) Consequently, the Estate of King Bethel shall be removed as a purported party, leaving the remainder of the action intact;
- (3) Anthony Mark Bethel is hereby appointed to represent the Estate of King Bethel for the purposes of bringing this action against that Estate;
- (4) the Claimant is granted permission to join Anthony Mark Bethel as a defendant to this action (as representative of the Estate of King Bethel) and to duly serve process on him;
- (5) The issue of costs is reserved to be dealt with following the hearing of the Claimant's application.

Dated 13 July 2026



Simone I. Fitzcharles

Justice