COMMONWEALTH OF THE BAHAMAS **2023/APP/MAG/00032**

IN THE SUPREME COURT
APPEALS DIVISION

IN THE MATTER of the Magistrate Court Order given the 30th November 2023 in the matter of Lennor Rolle v Marvin Stubbs No. 5535 of 2023

BETWEEN

Marvin Stubbs
Orita Stubbs
(Executors in the Estate of the late Paula Willamae Fountain)
Appellants

and

Lennor Rolle

Respondent

Before: The Honourable Madam Justice Joyann Ferguson

Appearances: Mr. Lessiah Rolle Counsel for the Appellant

No appearance for the Respondent

Hearing date: 23rd July, 2026

RULING

Introduction

[1].This is an appeal from the Order of the Learned Magistrate Kendra Kelly, made on 30 November 2023 in Magistrate Court Action No. 5535 of 2023, Lennor Rolle v Marvin Stubbs. By that Order, vacant possession was granted in favour of the Respondent, Lennor Rolle.

[2].The dispute concerns property described in the material before this Court as Lot No. 12 in Block No. 219 in the Grant's Town Area, New Providence, Bahamas.

[3].The evidence of Orita Brown-Stubbs is that the property was conveyed to the late George Turnquest ("the deceased") on 19 June 1984. The Appellants contend that Paula Willamae Fountain, was the paramour of the deceased, and remained in open and peaceful possession of the property following his death. She died on 12 July 2023.

[4].The Appellants advanced several grounds of appeal. They challenge the jurisdiction of the Magistrate on the basis that title to land was in issue. They rely upon the Limitation Act and possessory title; advancing a claim founded upon proprietary estoppel. They further contend that the Respondent did not possess the requisite *locus standi* to obtain the Order from the Court for possession.

[5].By affidavit of R/Inspector 1098 Carlton McPhee filed on 25th June, 2026, the Court noted that the Respondent was served with the Notice of Appeal on 23rtd June, 2026. Nonetheless, she did not appear at the hearing of the appeal. Neither was any defence or written submission filed on her behalf.

[6]. The absence of the Respondent does not, however, relieve this Court of its obligation to consider the appeal upon its merits and to determine whether the Order of the Learned Magistrate can properly stand.

The Competing Wills

[7].The evidence before the Court discloses a Will of the late George Turnquest dated 4 November 1992. By that Will, Frederick R. Sands was appointed Executor, with Carl Sands appointed alternatively should Frederick R. Sands predecease the testator. The property at Mason Addition was devised to Mary Turnquest.

[8].The Appellants' case before the Court must, however, be within the context of a subsequent Will of George Turnquest dated 19 April 2010 ("the later Will"). I also note that later Will was tendered by the Respondent as evidence in the lower Court showing that the Respondent, Lennor Rolle, is named as one of two executors and is also a beneficiary of the property (the subject of the eviction).

[9]. It is important to distinguish those testamentary instruments. The Will relied upon by the Appellants and exhibited in their evidence is not the same Will upon which the Respondent asserts her interest. She relies upon the later Will which,

if valid, operates as the later testamentary instrument and supersedes the earlier Will.

[10].The difficulty for the Respondent is not merely the existence of two Wills. It is that the later Will upon which her authority depended had not been admitted to probate when she invoked the jurisdiction of the Magistrate's Court and obtained the final Order for vacant possession.

The Issue

[11].The narrow question is

- Whether the Respondent established before the Magistrate a sufficient representative title in the Estate of the late George Turnquest to entitle her, acting alone, to obtain an order for vacant possession of estate property in question.

The Applicable Law

[12]. **Section 59(1)** of the **Probate and Administration of Estates Act, Chapter 108** ("**the PAEA**") provides that,

> Real estate to which a deceased person was entitled for an interest not ceasing on his death, shall, on his death and notwithstanding any testamentary disposition thereof, devolve on the personal representative of the deceased.

[13].**Section 59(2)** further provides that the personal representative represents the deceased in respect of such real estate and holds the estate as trustee for those persons entitled thereto.

[14].The Act defines *"personal representative"* to mean the executor or administrator for the time being of a deceased person. The statutory scheme therefore maintains the important distinction between the legal administration of an estate by its personal representative and the beneficial interests ultimately enjoyed by persons claiming under the Will.

[15].The common law position concerning an executor who has not yet obtained probate requires some consideration. It would be incorrect to say that a person named as executor has no capacity whatsoever until probate has been granted.

[16].In ***Chetty v Chetty*** [1916] AC 603, the Privy Council explained that an executor derives his title and authority from the Will and not from the grant of probate. An executor may therefore institute proceedings before obtaining probate. Critically, however, the executor cannot obtain a decree before probate is granted. Probate is the recognised means by which the executor proves his representative title to the Court.

[17].That distinction is crucial in the present appeal. The absence of probate did not necessarily render the commencement of proceedings by a duly appointed executor a nullity. It did, however, leave the Respondent unable to establish by the recognised grant that she possessed the representative title upon which the final relief sought depended.

[18].The Court is fortified with the decision in ***Henfield v Walkine***, BS 2015 SC 12. There, the Court considered whether an executor possessed *locus standi* in the absence of a grant of probate and accepted that an executor had capacity to commence proceedings notwithstanding that probate had not yet been obtained. Winder J (as he then was) stated at paragraph 18 that:

> **It is accepted that the plaintiff, as named executor, has the capacity to commence proceedings on behalf of an estate in the absence of a grant of probate**. I am satisfied however, that whilst the plaintiff has the appropriate locus standi to commence the action on behalf of the estate as Executor **she ought not be permitted to be maintained such an action or receive a judgment in the absence of a grant.** This is especially so in light of the fact that the plaintiff has expressed no intention in pursuing the grant unless there is a positive result in the disposition of this action. The result of such a posture is that the estate may never become constituted.

[19].The aforementioned9 authority reinforces the distinction between capacity to commence proceedings and proof of representative title necessary to obtain substantive relief.

[20].There is a further feature in this case. The Respondent was not named as the sole executor under the later Will. She was, on the information before this Court, one of two executors.

[21].**Section 49(1)** of the **("PAEA")** provides that:

> Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove all the powers which are by law conferred upon the personal representative may be exercised by the proving executor or executors for the time being and shall be as effective as if all the persons named as executors had concurred therein.

[22].It identifies the grant of probate as the event by which one or some of several named executors may exercise their powers notwithstanding another named executor has not joined.

Analysis

[23]. I turn to the Order under appeal.

[24].The Respondent commenced proceedings in her own name and obtained an Order for vacant possession of property said to form part of the Estate of George Turnquest. Her entitlement necessarily depended upon the testamentary disposition of that estate.

[25].Counsel for the Appellants originally advanced the *locus standi* ground on the footing that the 1992 Will did not name the Respondent at all, and that it had not been probated.

[26].The Respondent's omission from the earlier Will is no longer determinative if she is named as an Executor and beneficiary under the later Will. The real question is whether she has established the representative authority upon which the Order for possession could properly be founded.

[27].The Court finds that there was no evidence before the Magistrate that probate of the later Will had been granted to the Respondent when the proceedings were determined.

[28]. Additionally, the fact that the Respondent is a beneficiary under the later Will does not, without more, establish that the legal estate vested beneficially in her upon death. Neither was she entitled in that capacity alone to recover possession

of the property (subject of the appeal). **Section 59 of the POA** expressly provides for the devolution of the deceased's real estate upon the personal representative notwithstanding a testamentary disposition. The beneficiary's beneficial entitlement and the personal representative's authority to administer estate property are distinct concepts and are not interchangeable vehicles of authority.

[29].That principle assumes even greater significance where, as here, the person asserting representative authority is one of two executors named in the testamentary instrument. The evidence before the Court does not demonstrate to the extent of the concurrence or renunciation of the other executor, or any other judicial authority permitting the Respondent alone to obtain the substantive relief sought on behalf of the Estate.

[30].There was therefore an evidential and legal deficiency going directly to the foundation upon which the Order for possession was granted. Before making an order requiring the occupants to deliver vacant possession of property said to fall within a deceased's estate, the Magistrate was required to be satisfied that the person invoking its jurisdiction possessed the legal capacity and established representative authority.

[31].While the Appellant has advanced arguments on title and the limitation period amongst other things not raised in the Court below, I make no final determination in this appeal as to

i. Whether the Appellants have established possessory title to Lot No. 12,
ii. Whether the statutory limitation period has extinguished the documentary title, or
iii. Whether the facts establish a proprietary estoppel.

[32].Those matters raise questions which would require adjudication upon the evidence and, on the question of title to land, consideration of the jurisdictional restriction contained in section 52 of the Magistrates Act.

[33].It is sufficient for the present purposes to determine that the Order under appeal cannot safely stand where the Respondent, has obtained substantive possession in reliance upon an estate interest without firstly establishing the title necessary to support that relief.

[34].The Respondent was served with the Notice of Appeal. She did not appear before this Court and filed no defence or submissions answering the grounds advanced by the Appellants. Her non-appearance does not automatically entitle the Appellants to succeed; but it leaves the evidence and legal argument concerning the absence of the requisite grant and the Respondent's authority unanswered.

Conclusion

[35]. For the reasons stated, I am satisfied that the appeal ought to be allowed.

[36].I emphasise that my conclusion is not founded upon the broad proposition that an executor named in a Will has no standing whatsoever before probate. That would be inconsistent with established case law. Rather, the decision is based, having regard to the consideration that the Respondent, being one of two persons named as Executors under the later Will obtained a final Order for vacant possession. That relief, without evidence demonstrating that she alone was authorised to exercise the relevant powers on behalf of the Estate was ill found.

[37].The distinction is material. The right to commence proceedings and the right ultimately to obtain judgment in a representative capacity are not synonymous. Whatever preliminary capacity Rolle may have derived from her nomination as executor, the evidential foundation necessary to establish her representative title for the purpose of obtaining the final Order was absent.

[38].In the premises, the Order of the Learned Magistrate made on 30 November 2023 cannot stand.

Order

[39].Accordingly, I make the following Orders:

i. The appeal is allowed.

ii. The Order of the Learned Magistrate Kendra Kelly **is hereby set aside**.

iii. For the avoidance of doubt, this Court makes no declaration on this appeal as to the ultimate ownership of Lot No. 12 Block 219,

the validity of either testamentary instrument, possessory title, proprietary estoppel, or the ultimate beneficial entitlement to the property. Those matters are not necessary for the determination of this appeal.

iv. Costs of the appeal are awarded to the Appellants in the amount of $4000.00

Dated 16th of September, 2026



The Honourable Madam Justice Joyann Ferguson

Justice of the Supreme Court