

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

COMMON LAW & EQUITY DIVISION

Claim No. 1995/CLE/gen/0029

BETWEEN

**REV. JAMES SANDS
REV. HOWARD WILLIAMS
REV. DANIEL SCOTT
REV. NEWTON WILLIAMSON
REV. ALEXANDER BETHEL
REV. SYLVANUS PETTY
REV. FAITH MAYCOCK
REV. ANNIS ANTROBUS
REV. ALVIN GREENSLADE
(TRUSTEES OF THE AFRICAN METHODIST EPISCOPAL CHURCH, ELEVENTH
EPISCOPAL DISTRICT, BAHAMAS BRANCH, "AME CHURCH BAHAMAS")
Claimants**

AND

**REV. VERNAL HANNA
MRS. JANE MCINTOSH WHITE
MR. BENJAMIN LIGHTBOURN
MRS. JESTINA HANNA
REV. E.L. PENN**

Defendants

**Before: Her Ladyship The Honourable Madam Senior Justice
Deborah Fraser**

**Appearances: Ms. Ciji Smith-Curry for the Claimants
Ms. Julie McIntosh (under a Power of Attorney) for
Reverend Vernal Hanna
No appearance for Mrs. Jane McIntosh White, Mr.
Benjamin Lightbourn, Mrs. Jestina Hanna or Reverend
E.L. Penn**

Judgment Date:

03 August 2023

Preliminary Issue – Locus Standi - Whether an individual acting under Power of Attorney can bring a claim personally on behalf of others – Legal Professions Act, 1993 sections 2, 10, 20 and 22 – Unqualified Persons not to act as counsel and attorney – Law of Agency

JUDGMENT

1. This is an application regarding the *locus standi* of Ms. Julie McIntosh, an individual empowered by a Power of Attorney to act on behalf of Reverend Vernal Hanna.

Background

2. By an Indenture of Conveyance dated the 19 August 1967 made between Lady Freda Genevieve Roberts of the one part and Reverend L.O. Moss, Verenell C. Hanna, the Reverend E.L. Penn, James S. Sands, Ophilia Moss, Benjamin Lightbourne, the Reverend E.W. Adderley, Jane McIntosh and Justina Hanna of the other part and recorded in Volume 1005 at pages 21 to 24 in the Registry of Records in the island of New Providence, Lady Freda Genevieve Roberts conveyed her interest in all that piece, parcel or lot of land having the Number 11 (No. 11) in Block Number Thirty-Seven (No. 37) on the plan of lots of the Subdivision laid out by the New Providence Land Company Limited in the Eastern District of the Island of New Providence ("**Property**") to the aforementioned parties.
3. The African Methodist Episcopal Church Bahamas Conference constructed St. Mark's AME Church on the Property.
4. Shortly thereafter, Reverend Vernal Hanna appointed himself as Pastor of St. Mark's AME Church and subsequently refused to relinquish such post as pastor to the pastors who were appointed by the Bishop of the Conference.
5. On 11 January 1995, the Claimants filed their Specially Indorsed Writ of Summons. According to the pleadings, the Claimants seek vacant possession of the Property which Vernal Hanna refuses to vacate. Subsequently the Defendants filed a Memorandum of Appearance on 23 January 1995 but failed to file and serve a Defense prior to the expiration of time as per the Rules of the Supreme Court ("**RSC**"). Further, a notice of Intention of Proceed and a Memorandum of Appearance were filed by the Claimants on 25 February 2004. On 22 October 2014, a Notice of Appearance was entered by the Defendants.

6. On 26 April 2018, the Honourable Madam Justice Indra Charles, upon hearing an application on behalf of the Plaintiffs, there being no appearance for the Defendants and no Defence served by the Defendants, ordered, inter alia, that the Plaintiffs were at liberty to enter judgment against the Defendants for possession of the property.
7. On 29 December 2021, Ms. Julie McIntosh (“**Ms. McIntosh**”) filed a Notice of Appointment of Power of Attorney/Agent for the Defendants and on 06 August 2022 filed a summons “*for an application by the Defendants that the Plaintiffs be stopped from falsely claiming ownership and possession of the order dated the 10th day of May A.D. 2018 on the grounds that the Defendant has a good and viable defense....*”
8. On 24 November 2022, the Parties appeared before Justice Charles and after hearing both parties, the Court ordered, inter alia, that as the Order made on 26 April 2018 was not perfected it was to be set aside and the Defendants were permitted to file a Defence (which they did). This subsequent order was perfected on 08 December 2022.
9. Before the trial of the action, on or about 24 February 2023, Ms. Julie McIntosh appeared before Deputy Registrar Edmund Turner who granted a Writ of Possession to the Defendants. The Writ of Possession cited the order dated 08 December 2022 and “*Judge’s Ruling on December 14 2023 that the last Order of December 8th 2022 stands*” as their authority for Deputy Registrar Edmund Turner to grant the writ of possession. The validity of the Writ of Possession is now being challenged as it is alleged that it was obtained under false pretenses as it references an order made by Justice Charles on 14 December 2023 and there is no record of any hearing regarding that order taking place.
10. Prior to any further proceedings being heard by this Court, a preliminary issue was raised regarding Ms. McIntosh’s standing in this matter.

ISSUE

11. The issue that the Court must decide is whether an individual who is empowered by a Power of Attorney has the right to conduct litigation or render legal services on behalf of the donor of the power?

Ms. McIntosh’s Submissions

12. From the Court’s understanding of Ms. McIntosh’s submissions, she appears to rely on **rules 1.1(2), 1.1(2)(a), 1.1(2)(c) and 1.2(1)(b) of the Supreme Court Civil Procedure Rules, 2022 (“CPR”)**, to advance the position that she is permitted to act on behalf of the Defendants and defend this claim. Those rules state:

“1.1 The Overriding Objective

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.

(2) Dealing justly with a case includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;

(b) ...

(c) dealing with the case in ways which are proportionate to —

(iv) the financial position of each party.

1.2 Application of overriding objective by the Court.

(1) The Court must seek to give effect to the overriding objective when —

(a)...

(b)...

(c) exercising any discretion given to it by the Rules;”

13. Ms. McIntosh states “*with more than four decades in [one] profession, The Power of Attorney/Agent and Trustee knows her calling in the Chosen Career*”. She states that the Power of Attorney (dated 08 October 2021 between Reverend Vernal Hanna of the one part and Julie C. McIntosh of the other part and recorded in Volume 13856 at pages 279 to 283 in the Registry of Records in the City of Nassau, The Bahamas – “**Power of Attorney**”) bestows her with the ability to defend the action as against the named Defendants.

Claimants’ Submissions

14. The Claimant’s counsel submits that Ms. McIntosh is not a qualified counsel and attorney at law in the Commonwealth of The Bahamas and thus does not have a right of audience. Counsel further asserts that Ms. McIntosh is an unqualified person as defined under the Legal Professions Act, 1993 (“**LPA**”) She cites **sections 2, 10(1) , and Parts A, B and C of the First Schedule of the LPA**, which provide:

““unqualified person” means either a person whose name does not for the time being appear on the Roll or counsel and attorney whose name is on the Roll but who is for the time being suspended from practice, but does not include —

(a) a person specially admitted, a registered associate or a legal executive as respects the performance by him of any function falling within his competence under this Act as a person specially admitted or as a registered associate or a legal executive; or

(b) any person within the benefit of section 25, and “qualified person” shall have a corresponding meaning.

10. (1) No person shall be admitted to practice unless he is qualified in disqualified for admission under subsection (2).

PART A

A person is qualified for admission to practice under this

Part of this Schedule if —

(a) he has been called to the Bar of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed; or

(b) he has been admitted to practice as a solicitor in the Supreme Court of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed.

PART B

A person is qualified for admission to practice under this Part of this Schedule if he has been awarded a Legal Education Certificate by the Council of Legal Education of the West Indies.

PART C

A person is qualified for admission to practice under this

Part of this Schedule if he —

(a) holds a degree in law from a university or institution approved by the Bar Council and the Council of Legal Education of the West Indies as being academically equivalent to a Bachelor of Laws degree from the University of The West Indies;

(b) is a person who completed the period of articleship required by subsection (2) of section 43 with a counsel and attorney in actual practice in The Bahamas and such articles began on or before the expiration of two years from the appointed day or on such later date as the AttorneyGeneral may by order designate;

(c) has passed the examinations approved by the Bar Council and the Council of Legal Education of the West Indies for the purposes of this Part.”

15. Counsel then cites section 20 and 22(1) of the LPA, which read:

“20. (1) Save where expressly permitted by this or any other Act, no unqualified person shall act as a counsel and attorney, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other

person or in his own name, in any court, or act as counsel and attorney in any case, civil or criminal, to be heard or determined in any court.

(2) Any person contravening this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

22. (1) Any unqualified person who directly or indirectly draws or prepares any instrument relating to real or personal property or to any legal proceedings is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars, unless he proves that the act was not done for or in expectation of any fee, gain or reward.”

16. Counsel also relied on the case of **Gregory and another v Turner and another v R (on the application of Morris) v North Somerset Council [2003] 2 All ER 1114** for the following:

“In a later passage the authors comment:-

"The term 'power of attorney' is usually applied to a formal grant of power to act made by deed or contained in a deed relating also to other matters. There was in fact no rule that agency must be created by deed, except where the agent himself is empowered to execute a deed, and it seems that such a power could at common law be granted by simple writing. However, the Powers of Attorney Act 1971 s1 requires that powers of attorney be executed under seal. The term 'power of attorney' is not defined, but presumably means a formal grant of agency powers, often of a general nature."

67 As this passage makes clear, the grant of a power of attorney is in principle no more than the grant of a form of agency”

17. Counsel then relies on **Adam Bilzerian et al v Terrace Byron et al Claim No. SKBHCV2017/0072 (“Bilzerian”)**, where Ventose J made the following pronouncements at paragraphs 48 and 49:

“[48] A litigant in person is an individual party to proceedings before the court who decides to conduct the litigation by himself or herself without the need to be represented by an Attorney-at-Law. That right is granted to that party himself or herself; it cannot be by anyone else....

[49] [A] power of attorney, however broadly drafted, cannot confer a right on that person to act in person for that party. It defies belief that this was allowed to happen and for so long. A litigant in person means what it says without the need to be represented by an Attorney-at-Law, in civil proceedings. That right does not extend to anyone else other than the individual party to proceedings.”

18. The Claimants' counsel then referred to **Herman Elisha Francis v The National Insurance Board 2021/CLE/gen/00319** ("Francis"). There, Brathwaite J had to consider whether Mr. Leslie Stuart, who was granted a power of attorney to represent the Plaintiff, had the right to represent the Plaintiff. Brathwaite J opined:

"15.it is in my view clear that a power of attorney does no more than create an agency authorizing the donee to act in the stead of the donor of the power. What is also clear is that there is no authority for the proposition that a power of attorney authorizes the donee to appear personally in court to argue a matter..."

16. [G]enerally the only persons who are entitled to rights of audience before the court are the parties themselves, when not represented by counsel, or persons who have been duly admitted to the practice of law in this jurisdiction...I am therefore constrained to find that the Power of Attorney does not confer on Mr. Stuart the right to appear in person on behalf of the donor of the power, as it is a right which cannot be delegated, nor is a right of audience conferred on Mr. Stuart by any other legal device...(emphasis added)"

19. Counsel advances that Ms. McIntosh is not an attorney nor a member of the Bahamas Bar. Further, she asserts that the Power of Attorney only empowered Ms. McIntosh to act on behalf of Reverend Vernal Hanna and no other Defendant, yet she purports to act on all of their behalfs.

20. The Claimants' counsel further submits that the Power of Attorney does not authorize the donee to appear personally in a matter before the Court. Counsel further contends that, even though legislation does permit a litigant to appear himself, Ms. McIntosh (based on the authorities cited above) does not have such right to appear in such a capacity.

21. Further, counsel submits that since 29 December 2021, Ms. McIntosh has acted as Counsel and Attorney-at-law by not only appearing in Court, but by drafting documents for and on behalf of the Defendants. This, Counsel asserts, is expressly prohibited by section 22 of the LPA. The only exception, according to Counsel, is where the individual appears pro se. This, Counsel submits, does not apply to the instant case as Ms. McIntosh is not a named party in the action.

DISCUSSION AND ANALYSIS

Whether an individual who is empowered by a Power of Attorney confers rights to conduct litigation or render legal services on behalf of the donor of the power.

22. Ms. McIntosh is of the view that she has acted on the Defendants' behalfs this entire time and her authority to act on behalf of the Defendants. She also believes that it is not proper for the Claimants' counsel to now challenge her *locus standi*. She forms the view that such an objection is merely to waste the Court's time and delay the trial.
23. The Claimants' Counsel, however, submits that Ms. McIntosh's purported representation cannot continue. She has no legal authority to act in the capacity she seeks to act in and thus, has no right of audience before this Court.
24. The authenticity of the Power of Attorney is not in dispute – only the authority which it bestows on Ms. McIntosh is being challenged.
25. After considering the above authorities and applying them to the instant case, I agree with the Claimants' Counsel. Ms. McIntosh is not Counsel and Attorney-at-law in this jurisdiction and she has no special legal instrument/device that permits her to act in such a capacity.
26. In the *Francis* decision, Brathwaite J succinctly analyzes and explores the law relating to persons acting under a power of attorney who seek to bring/defend claims personally for their donors. I can do no better than to indorse the learned judge's reasoning and analysis. I merely wish to highlight a passage from Brathwaite J's ruling at paragraph 11 which provides:

“The learned Justice Ventose [in the Bilzerian case] then cites the following at paragraph 52:

[52] In In the matter of Applications for Orders in Relation to Costs in Intended Proceedings by Coffey and others [2013] IESC 111 (26 February 2013), the Supreme Court of Ireland had to consider an application by a person, who was neither a solicitor nor counsel or a party to the proceedings, to represent litigants in proceedings before the High Court. In rejecting the application, the Supreme Court explained that:

23. The fundamental rule is that the only persons who enjoy a right of audience before our courts are the parties themselves, when not legally represented, a solicitor duly properly instructed by a party and counsel duly instructed by a solicitor to appear for a party. That rule does not exist for the purpose of protecting a monopoly of the legal professions. Kennedy C.J. considered an application, In the matter of the Solicitors (Ireland) Act, 1898 and in the matter of an application by Sir James O'Connor [1930] 1 I.R. 623 at page 629, for the readmission to the roll of solicitors of a person who had formerly practiced as both a solicitor and a barrister before being appointed to the bench from which he had retired....the Chief Justice explained that one of the points of view of relevance was that “of the public-of the people from whom ultimately are

derived and held,...as a privilege the monopoly of the right to practice as solicitors and advocates, “The limitation of the right of audience to professionally qualified persons is designed to serve the interests of the administration of justice and thus the public interest.

24. The exclusive right of counsel to audience in the courts is derived from the common law....

29. It would be inimical to the integrity of the justice system to open to unqualified persons the same rights of audience and representation as are conferred by the law on duly qualified barristers and solicitors (emphasis added)”

27. The Power of Attorney only creates an agency and does not imbue a donee with the power to bring or defend any claim in his/her personal capacity.

28. It is noted that Ms. McIntosh states “with more than four decades in [one] profession, The Power of Attorney/Agent and Trustee knows her calling in the Chosen Career”. It is unclear which profession Ms. McIntosh is referring to in her submissions, but this Court is not prepared to permit Ms. McIntosh to act as Counsel and Attorney any longer.

29. Though Ms. McIntosh relies on the overriding objective as outlined at rule 1.1 of the CPR, I do not see how it assists. The Court cannot permit any action which is forbidden under other laws – particularly in relation to legal representation before the courts. Not only that, but the overriding principle requires that justice must be done. Indeed, to allow Ms. McIntosh to continue this purported representation only sends the message that such actions are permissible before the Supreme Court. This Court will not allow this.

30. Ms. McIntosh has contravened both sections 20 and 22(1) and (3) of the LPA by purporting to act as Counsel and Attorney-at-law and by preparing and filing several documents (for example, the preparation and filing of a Defence and several summonses, affidavits, orders and notices) – both of these acts are strictly forbidden under the LPA. It is important to note the wording of section 22(1) and (3) of the LPA.

“22. (1) Any unqualified person who directly or indirectly draws or prepares any instrument relating to real or personal property or to any legal proceedings is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars, unless he proves that the act was not done for or in expectation of any fee, gain or reward.

(3) Nothing in subsection (1) shall be construed as preventing a person in the regular employment of a counsel and attorney from preparing, in the course of that employment and under the supervision of the counsel and attorney, any instrument that is

required by the counsel and attorney and for which the counsel and attorney assumes responsibility”

31. Though the LPA permits non-attorneys to draft documents, three criteria must be satisfied: (i) the individual must be in the employ of the attorney; (ii) such drafting must be supervised by the attorney; and (iii) the attorney must take responsibility for such documents drafted. There is no evidence before this Court confirming that these criteria were satisfied. Accordingly, such drafting done by Ms. McIntosh is in contravention of the LPA.
32. The Courts must protect the administration of justice, the legal profession and, the public at large. We must ensure the integrity of the legal system is upheld and that rules of court and the law are adhered to in every respect. Protection and preservation of our legal processes and ensuring the public's confidence of our legal system are paramount. Only members of the Bar (and those granted special admission) are trained, skilled and permitted to bring/defend claims/matters before the Courts – this is done to ensure that legal procedure is adhered to and to ensure the smooth administration of justice.
33. Accordingly, I rule that Ms. McIntosh, being an unqualified person and thus not being a Counsel and Attorney-at-law, cannot defend the action as against any of the Defendants. She has no right of audience.
34. The Defendants should, therefore, seek to retain counsel to represent them in this action or appear themselves before the Court to defend the matter personally.

CONCLUSION

35. In accordance with the above authorities and reasoning provided, I must prohibit any further purported representation by Ms. McIntosh in this action as she is deemed an unqualified person under the LPA. Accordingly, she has no *locus standi* before this Court.
36. The Claimants and the First Defendant, Reverend Vernal Hanna, shall provide written submissions on costs for the Court's consideration within four (4) weeks from the date of this judgment.

Senior Justice Deborah Fraser

Dated this 03rd day of August 2023