

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

**2015
PRO/cpr/00036**

**IN THE MATTER OF SHERLIN JEFFREY BANNISTER a.k.a JEFFREY BANNISTER, late
of No. 3 Carefree Court Garden Hills II in the Southern District of the Island of New Providence
one of the Islands of Commonwealth of The Bahamas, deceased.**

BETWEEN

LATANIA BANNISTER	Plaintiff
AND	
AUTHREY BANNISTER	1st Defendant
AND	
MICHAEL BANNISTER GREEN	2nd Defendant
AND	
AND LEONARD BANNISTER	3rd Defendant
AND	
CARLENE BANNISTER	4th Defendant
AND	
DOUGLAS BANNISTER	5th Defendant
AND	
DEBRA BANNISTER	6th Defendant
AND	
ISMAE BANNISTER	7th Defendant

JUDGMENT

Before: **The Hon. Madame Justice J. Denise Lewis-Johnson MBE**
Appearances: Bridget Ward of Counsel for the Plaintiff
K. Melvin Munroe of Counsel for the Defendants
Hearing Date(s): 18th July 2018, 8th March 2018, 20th March 2018, 30th March 2022, 2nd May 2022; 13th June 2023; 12th February 2024

Probate- Financial Provision- Distribution of Deceased Assets- Testate-Inheritance Act-Probate and Administration of Estates Act

Introduction

1. By an Amended Originating Summons filed 19th July 2016, and later converted to a Writ of Summons, the Plaintiff sought the Courts determination on the following:
 - a. That the Plaintiff is the lawful widow of the deceased;
 - b. What properties and assets comprise the deceased estate and if they were encumbered; and
 - c. What financial provisions should be made for the lawful widow?
2. Sherlin Jeffrey Bannister (“the deceased”) was married to the Plaintiff for 2 ½ years prior to his death testate on the 5th August 2014.
3. The Plaintiff married the deceased on the 26th November 2011 and moved into his home around January or February 2012.
4. The matrimonial home formed part of the deceased estate to be distributed in accordance to the provisions of his last will and testament reflected above.

Evidence of the Parties

Plaintiff Witnesses

Latania Bannister

5. The deceased made no provisions for me in his last will and testament.
6. The deceased and I share a minor child who is 7 years of age. The child and I presently reside in the matrimonial home with my 23 year old son who is mentally challenged and my 19 year old son who is unemployed.

7. That Vasticia Bannister, the granddaughter of the deceased also resides in the home and fails to contribute toward utility expenses.
8. Since the death of the deceased, the minor child and I have been harassed by the children of the deceased and by letters dated 31st March 2015 and 9th January 2015, the attorneys for the estate has asked me to vacate the matrimonial home.
9. On June 29th 2015, Mr. Authrey Bannister and Leonard Bannister came to the home and Leonard Bannister removed the water pump and license plate from the vehicle which I drove.
10. I made a formal complaint against him but was advised to take out a binding over Summons in the Magistrate Court.
11. On the 20th June 2015 around 1p.m, my son Jesse and daughter Jefferel called to advise me that Ismae and Carlene Bannister were in my bedroom. When I returned home I discovered items from the home missing.
12. I am in fear for my life because while waiting on the police to show up on the 29th June 2015, Leonard Bannister told me that I hadn't seen harassment yet.
13. On Saturday 15th August 2015 the children held a repass for Sharillistene Bannister at the home without a word to me and that same day my car which I drove was removed off the property.
14. On the 29th August 2015 I found a dining room table and 8 chairs in the car port which I had initially removed from the home before the death of the deceased.
15. On September 11th 2015 Bernadette, Carlene, Deborah, Sampson and Leonard Bannister gathered at the house and cooked without consideration for me and the minor child.
16. It is difficult on my salary to watch the children of the deceased walk in and out of the house, using the gas, and utilities with no assistance from the deceased estate.
17. I am employed at Little Feet Academy earning a salary of \$1,320.00 per month. I also receive \$500 per month from the rent in Cumberbatch Alley and collect \$260 from the National Insurance Board for my disabled son.
18. My monthly expenses are \$2,058.12 and during the marriage, the deceased and I maintained the family with monies collected from the apartment.
19. I am experiencing financial difficulties.

20. That Ismae Bannister is the mother of Vastacia and she justifies her invasion of my privacy by stating she is coming to see her daughter.
21. The deceased's children and I never got along and doubtful that we will ever get along.

Jesse Paul

22. I am the son of the Plaintiff. After the death of my mother's husband she was continually harassed by the deceased children.
23. That Ismae Bannister one evening told my mother she needed the key for the home and that my mother was in her space. That on another occasion Leonard Bannister removed the water pump from the home and parked a dump truck along with the other vehicles in the driveway so my mother could not enter the yard.
24. Douglas Bannister (now deceased) unlocked the front door so that Ismae Bannister's daughter could move back in the house without my mother's permission. The police were called and Ismae Bannister's daughter was advised to remove her things from the home.
25. The siblings after a repass also took a car from the yard that the deceased bought for my mother.

Melissa Simone Bowe

26. I am the niece of the Plaintiff and often visited her when she was married to the deceased.
27. I witnessed the children of the deceased interfering with the Plaintiff by repeatedly telling her that the house is their dad's and she must give them the keys. At times they were aggressive towards the Plaintiff.
28. On one occasion I visited with my aunt to take her for conch salad and the children of the deceased stated that they needed to talk to her and my aunt did not leave the house until they left.
29. On another occasion one of the deceased sons removed the water pump from the property leaving my aunt without water for a short period.
30. I encouraged my aunt to change the locks as the granddaughter of the deceased wanted to remove items from the house.

31. On one occasion the children of the deceased came to the home interfering with my aunt which almost resulted in a physical altercation with myself and one of the sisters.

Defendant Witnesses

Vastacia Bannister

32. I am the daughter of the Ismae Bannister. I lived with the deceased all of my life and witnessed my aunts cook daily meals and clean for the deceased.

33. The Plaintiff would leave the home early and return home late and would rarely cook meals for the deceased and complained of being tired.

34. The deceased was bed ridden and ill, he slept in a hospital bed in the front room area and the Plaintiff would leave him alone and sleep in the bedroom.

35. The Plaintiff and I did not have any issues when the deceased was alive but things changed after his death.

36. The Plaintiff changed the locks on the house resulting in me calling my uncle, Douglas Bannister to gain access to the residence.

37. The Plaintiff had a police officer serve me with a Summons for eviction while in the home and the matter was dismissed by the Courts.

38. I was forced to move out of the home which my mother has a beneficial interest in.

Deborah Bannister

39. I am the 5th Defendant in this action and had the responsibility of doing all the deceased business before his demise which included but was not limited to paying his monthly expenses, making bank deposits, collecting rent and purchasing groceries for the home.

40. I cooked meals for the deceased daily and assisted with keeping the residence clean with the assistance of my sister Carlene Bannister at times.

41. The Plaintiff would leave home early and come home late and complained of being tired and not interested in making meals for my father.

42. My father never instructed me to make any financial provisions for the Plaintiff and conveyed a rental property to the Plaintiff in trust for my sister Jefferel Bannister to assist her financially.

43. The Plaintiff after the death of my father called the police to prevent myself and my siblings from accessing the home we have a beneficial interest in and commence this action.

Carlene Bannister

44. That prior to the death of my father my sister Debra Bannister had the responsibility of doing my father's business which included paying bills, collecting rents, purchasing groceries and making bank deposits.

45. My sister carried on these duties on his instructions.

46. I visited my father and cooked his meals when my sister Debra Bannister was unable and at times we would both be to the residence assisting my father.

47. My father conveyed a rental property to the Plaintiff in trust for my sister Jefferel Bannister to assist her financially.

48. The Plaintiff never got along with myself and siblings because of the close relationship we had with our father.

49. The Plaintiff after the death of the deceased called the police to prevent myself and my siblings from accessing the home we have a beneficial interest in and commence this action.

The Issue (s)

50. Agreed issues are:

- a. What is the total value of the estate?
- b. What portion of the estate remains outstanding? What portion of the estate has to be distributed?
- c. Whether financial provision should be made for the Plaintiff?

Decision

51. This matter is governed by the Probate and Administration of Estates Act and the Inheritance Act.

52. A Grant of Probate was issued to the First Defendant as executor of the deceased will.

Clause 2 of the deceased will read as follows:

- a. *"I GIVE, DEVISE and BEQUEATH all of his real and personal Estates of whatsoever kind and whosoever situate unto my children, MICHAEL BANNISTER GREENE, LEONARD BANNISTER, CARLENE BANNINSTER,*

DOUGLAS BANNISTER, DEBRA BANNISTER, ISMAE BANNISTER, SHARILISTENE BANNISTER and to my wife, LATONIA BANNISTER IN TRUST for our daughter JEFFEREL BANNISTER until she attains the age of Twenty-one (21) years.”

Right of Occupation

53. The Plaintiff's dispute is based on provisions not being made for her as the spouse of the deceased in the Will and is now seeking financial provision from the Court pursuant to the Inheritance Act. It is also the Plaintiff's contention that she does not have quiet enjoyment of the matrimonial home (“the home”) as the Defendants continue to interfere with her enjoyment of same.
54. The deceased acquired the home prior to his marriage to the Plaintiff.
55. It is trite law that the spouse of a deceased by virtue of law is entitled to occupy the matrimonial home after the death of a spouse.
56. Section 24 (1) of the **Inheritance Act** “the Act” provides:

“ (1) Notwithstanding anything to the contrary in any other law and subject to the provisions of this section a surviving spouse who is not entitled to occupy a matrimonial home by virtue of a beneficial estate or interest or by virtue of any other written law giving him or her the right to remain in occupation, shall have, as regards the matrimonial home on the death of the other spouse who was entitled, a right to continue to reside in the matrimonial home and not to be evicted or excluded from the house or any part thereof in which the surviving spouse was residing at the time of the said death by the personal representatives or heirs of the deceased spouse except in accordance with the occurrence of any of the events in subsection (2)(b) or (3).

(2) The enjoyment of the right of occupation conferred by subsection (1) upon a surviving spouse (hereinafter referred to as “the holder”) shall cease upon the death or remarriage of the holder or be modified to such extent as is necessary on the coming into force of an order under this Act or the Matrimonial Causes Act affecting the rights or occupation of the holder.

(3) Where the right of occupation has become vested in the holder by virtue of the death of the spouse of the holder any person having an interest in the matrimonial home if adversely affected may, by originating summons, apply to the court for an order regulating the exercise by the holder of the right of occupation.”

57. The Plaintiff therefore has a right of occupation, to reside in the home after the deceased death once she remains unmarried or until her demise. This right that the Plaintiff has entitles her to exclusive use of the matrimonial home and all parts thereof, once she “was residing in the home at the time of the said death.

58. Section 24 (11) of **the Act** provides:

“For the purposes of this section “matrimonial home” means the dwelling house and any yard, garden or garage appurtenant thereto for the time being occupied by the parties to the marriage, and in respect of which house one spouse is entitled to occupy by virtue of the ownership therein of the beneficial estate or interest.”

59. It is the Plaintiff’s contention that her right of occupation is being interfered with by the Defendants. The Defendants have accepted by their evidence the Plaintiff’s right of occupation, but continues to interfere with the Plaintiff’s enjoyment of the property.

60. Not only does the Plaintiff have a right of occupation to the home but the law provides for a similar right to be extended to the minor child of the Plaintiff and deceased.

61. The Defendants are the beneficial owners of the property along with the minor child, but that interest is in abeyance subject to the Plaintiff’s statutory right to occupy the matrimonial home.

62. The Court also notes that the Plaintiff is aware of the interest the Defendants have in the property by virtue of the deceased will. The acts of the Plaintiff changing the locks on the matrimonial home due to fear of the deceased granddaughter removing items out of the home does not take away the beneficial interest of the Defendants in the property. She has a right to exclude them from access.

63. It is the Courts view that the acts of all parties involved are unacceptable. The issues raised among the parties ought to have been resolved peaceably. The law allows the spouse to reside in the home and the Defendants must not only respect that but not interfere with her occupation and grant her and the minor child quiet enjoyment.

Accounting of Assets

64. The Court has the power to order an executor to provide a proper accounting of the real and personal property of the deceased estate pursuant to Section 52 of the Act which provides:

“The personal representative of a deceased person shall when lawfully required so to do, exhibit a true and perfect inventory and account of the real and personal estate of the deceased, and the court shall have power as heretofore to require a personal representative to bring in that inventory.”

65. It is the Plaintiff’s submission that the First Defendant has failed to provide an accounting of the deceased estate per the Order of Justice Ian Winder (as he then was) given on 11th October 2016.

66. The 1st Defendant did not provide any evidence at trial, in his capacity as executor to account for or provide for the proper accounting of the deceased estate. The 6th Defendant however in her oral evidence provided an overview of the estate. She attests to most of the buildings in the deceased estates being in disrepair and the renovation of a building from her own finances. She received an income of about Three Thousand Dollars (\$3,000.00) to date. With the limited evidence before it, the Court is of the view that the 1st Defendant was not in compliance with the extant order.

67. In the case of **Lightbourne v. Bethel [1989] BHS J. No. 105**, George C.J. stated at paragraph 14;

“As stated in 17 Halsbury 4th Edition paragraph 1557; It is the duty of personal representatives to keep clear and accurate accounts, and always to be ready to render such accounts when called upon to do so. It is no excuse that they are inexperienced in keeping accounts for in that case it would be their duty to employ a competent accountant to keep them.”

68. The 1st Defendant as executor must provide an accounting of the deceased estate for the benefit of the beneficiaries of the estate, that is the Defendants and the minor child. The Plaintiff is entitled to the accounting for the benefit of the minor child whom interest the Plaintiff holds on trust until the minor attains the age of Twenty-one (21) years old. She is not personally a beneficiary of the estate.

Financial Provision

69. The Plaintiff is also requesting that the Court make an order for financial provision in her favor from the deceased estate. The law provides for a wife or husband on the death of their spouse to obtain financial provision if the will of the deceased fails to make provisions for the spouse.

70. **The Act** pursuant to Section 12(1) (a) provides:

“Where after the commencement of this Act a person dies domiciled in The Bahamas and is survived by any of the following persons — (a) the wife or husband of the deceased;

that person may apply to the court for an order under section 13 on the ground that the disposition of the deceased’s estate effected by his will is not such as to make reasonable financial provision for the applicant.”

71. The Court must also be satisfied that in the circumstances, the Applicant under this section has proven the need to be maintained in the circumstances. Section 12 (2) of **the Act** provides:

“(2) In this Part, “reasonable financial provision” means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his or her maintenance:...”

72. The Court also has the power to make an order for financial provision. Section 13 of the Act provides:

“(1) Subject to the provisions of this Part, where an application is made for an order under section 12, the court may, if it is satisfied that the disposition of the

deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders —

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of the net estate of a lump sum of such amount as may be so specified.

(2) An order under subsection (1)(a) providing for periodical payments to be made out of the net estate of the deceased may provide for —

(a) payments of such amount as may be specified in the order;

(b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified;

(c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside as appropriate for the making out of the income thereof of payments under this section,

or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3) Where an order under subsection (1)(a) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased

and another and may, in particular, but without prejudice to the generality of this subsection —

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payments as may be specified in the order;

(b) vary the disposition of the deceased's estate effected by the will in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient.

(5) In this section, residual personal estate means the remainder of the personal estate after all funeral, testamentary and administration expenses, debts and liabilities payable out of the estate, have been paid.”

73. The Court must also look at the circumstances of the case and must consider the provisions of Section 14 of the Act which provides:

“(1) Where an application is made for an order under Section 13, the court shall, in determining whether the disposition of the deceased estate effected by his will is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say —

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 13 has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 13 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 13 or of any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.”

74. The evidence reflect that the Plaintiff is currently employed at Little Feet Academy earning a monthly income of \$1,320.00. She further collects rent in the sum of \$500.00 per month from the Cumberbatch Alley property and receives \$260.00 per month from the National Insurance Board for her disabled son.

75. The Plaintiff listed an expenditure of \$ 2,058.12 per month and further testified that she and the deceased used the rents from the apartment to survive. There was no evidence provided that the Plaintiff's financial standing has weaken after the deceased death or that she relied on the deceased for financial stability during the short stint of their marriage.

76. The Plaintiff continues to benefit from the rent to assist with maintaining the minor child and this must continue.

77. The Court is of the view that despite the Plaintiff funds being limited there is a small excess left after the Plaintiff has satisfied her monthly obligations. The Plaintiff has many years prior to the retirement age. She has listed no physical or mental disabilities. There is no evidence of her decrease capability of earning capacity.

78. The Plaintiff further failed to lead evidence that would suggest that she was wholly or partially dependent on the deceased and after his demise her finances have suffered. She has present and future earning capacity.

79. As result of the evidence or lack thereof before the Court, I am of the view that the Plaintiff has not satisfied the threshold of an order for financial provision to be provided to her from the deceased estate. She is entitled to receive the \$500 rent from the apartment for maintenance of the minor child.

80. The Court must consider the meaning of the “right to occupy” the matrimonial property, in the context of the right of the beneficiaries to inherit. These are competing interest. Can it be that a spouse can occupy the matrimonial property for life, without the burden of maintaining the property, paying the taxes of the property and any and all expenses of the property. These financial obligations run concurrently with the benefit of right to occupy. In this case they are the obligation of the Plaintiff. She is to preserve this estate asset for the benefit of the beneficiaries.
81. No evidence was led on whether there are income generating assets of the estate. The Court is concerned about the maintenance of the apartment that generates \$500 income. Where does the resources come from to maintain it?
82. The Plaintiff will be allowed to occupy the matrimonial home for life if she remains unmarried or until her death, to the exclusion of the beneficiaries, for free. The beneficiaries may be entitled to some benefit, particularly after the minor child becomes an adult and the Plaintiff no longer holds in trust for him. The minor child will then be a beneficiary independently as all other beneficiaries with an interest subject to the Plaintiff’s rights. The law allows for the beneficiaries to make application to the Court for an Order to give them some benefit.
83. The Plaintiff is youthful enough to within time move on with her life. It cannot be equitable for her and a new interest, or any invited guest to occupy the matrimonial home without any benefit going to the estate. The Court having determined it is the Plaintiff’s obligation to maintain the property and pay for all the property’s financial expenses. Section 14 (1) (e) and (g) provides for the Court to consider the size, and nature of the estate, the conduct of the applicant and any other person.
84. The Plaintiff resides in the home with her two adult children who are not children of the deceased. She has a right to allow whomever she wishes to reside there with her. In the case of **Thompson v. Thompson and another [2011] 1 BHSJ No. 6** Sir Michael Barnett, CJ as he then was, stated that to claim the right to occupy *‘the surviving spouse must have been in actual occupation of the matrimonial home and it requires both physical presence and intention.’*

85. The Inheritance Act, 2002 by Section 24 (3) *“where the right of occupation has become vested in the holder, by virtue of the death of the spouse of the holder, any person having an interest in the matrimonial home if adversely affected may, by Originating Summons apply to the court for an order regulating the exercise by the holder of the right of occupation.”*
86. *As no such application has been made by* “any person having an interest in the matrimonial home” who is adversely affected. The Court is bound to address only issues before it. Parties are bound by their pleadings, as such no Order can be made on behalf of the Defendants who have an interest in the home.
87. By the above Section, the Defendants have a right to make an application by Originating Summons, but at present they have no right to enter and occupy the matrimonial home or to remove the Plaintiff from the home. It is only on such an application that the Court would give further consideration as to how that right to occupy could be varied.

CONCLUSION

85. I therefore find having considered the law, evidence and the demeanor of the parties before me:-
- i. The Plaintiff is the lawful widow of the deceased and she was in actual occupation of the matrimonial home at the time of her spouse’s death.
 - ii. That the Plaintiff has the right to occupation of the matrimonial home without interference of the Defendants. She is entitled to quiet enjoyment.
 - iii. That the Plaintiff’s application for financial provision from the deceased estate is dismissed, the Court found she did not meet the standard for such assistance.
 - iv. The Plaintiff is to maintain the home and pay all expenses associated with the upkeep of the home including but not limited to utilities, taxes and assessment and repairs.
 - v. The Plaintiff is not entitled to an interest in any other asset of the Estate as it is governed by the terms of the Will. She commenced this action in her

personal capacity and did not include the minor child as a party [next party].

Thus she cannot claim benefit for him in this action.

- vi. Each party bears their own cost.

Dated this 20th the day of March 2025

A handwritten signature in black ink, appearing to read "J. Denise Lewis-Johnson". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

The Hon. Madame Justice J. Denise Lewis-Johnson MBE