



[2025] JMSC Civ. 60

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. 2017 HCV 02371**

<b>BETWEEN</b>	<b>KEVIN BUCHANAN</b> <i>[Court-appointed Administrator of the estate of Ulysses Jabez Buchanan (deceased)]</i>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>JB TRUST LIMITED</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>ELGIVA BUCHANAN</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>SONIA CLARKE BUCKNOR</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>BANFIELD BUCHANAN</b> <i>[Dwain Buchanan, the duly appointed committee by order of the Court]</i>	<b>3<sup>RD</sup> DEFENDANT</b>
<b>AND</b>	<b>ANTHONY BUCHANAN</b>	<b>4<sup>TH</sup> DEFENDANT</b>

**CONSOLIDATED WITH:**

**CLAIM NO. 2017 HCV 02319**

<b>BETWEEN</b>	<b>BANFIELD BUCHANAN</b> <i>[Dwain Buchanan, the duly appointed committee by order of the Court]</i>	<b>CLAIMANT</b>
<b>AND</b>	<b>KEVIN BUCHANAN</b> <i>[Court-appointed administrator of the estate of Ulysses Jabez Buchanan (deceased)]</i>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>DIVIENNETTE BUCHANAN-WILLIAMSON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**CONSOLIDATED WITH:**

**CLAIM NO. 2016 HCV 01519**

<b>BETWEEN</b>	<b>ELGIVA BUCHANAN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DIVIENNETTE BUCHANAN-WILLIAMSON</b> <i>[Administratrix in the estate of Fredel Buchanan]</i>	<b>1<sup>ST</sup> DEFENDANT</b>

**AND**

**NAVARRO WILLIAMSON**

**2<sup>ND</sup> DEFENDANT**

**IN CHAMBERS VIA ZOOM**

Mrs. Ingrid Lee Clarke-Bennett, Attorney-at-Law instructed by Kingdom Chambers, Attorneys-at-Law for the 1<sup>st</sup> Applicant, Dwain Buchanan

Miss Karen O. Russell, Attorney-at-Law for the 2<sup>nd</sup> Applicant, Mrs. Sonia Clare-Bucknor

Mr. Wilwood Adams, Attorney-at-Law instructed by Robertson, Smith, Ledgister & Company, Attorneys-at-Law for Diviennette Williamson and Navarro Williamson.

Mrs. Ann-Marie Fuertado Richards, Attorney-at-Law for Kevin Buchanan.

**HEARD ON: MARCH 6 AND MAY 2, 2025**

**PROBATE AND ADMINISTRATION OF ESTATES - APPLICATION TO APPOINT ADMINISTRATOR AD LITEM – CIVIL PROCEDURE RULES 21.7 AND 21.8 – WHETHER THE EXECUTOR UNDER A LAST WILL AND TESTAMENT MUST BE APPOINTED AS THE PERSONAL REPRESENTATIVE OF THAT ESTATE - CRITERIA FOR APPOINTING PERSONAL REPRESENTATIVE – CONFLICT OF INTEREST - WHEN CAN THE COURT EXERCISE ITS POWER TO APPOINT THE ADMINISTRATOR GENERAL.**

**REID, ICOLIN J.**

**THE APPLICATIONS**

**[1]** These are two separate applications made by Mr. Dwain Buchanan and Mrs. Sonia Clare-Bucknor to be appointed Administrator Ad Litem in the estate of Elgiva Buchanan for the purpose of representation in the consolidated claim.

**[2]** On November 8, 2023, a Notice of Application for Court Orders was filed on behalf of Dwain Buchanan seeking the following orders:

1. *That the Applicant be appointed Administrator Ad Litem to represent the Estate of the 1st Defendant/ Claimant, Elgiva Buchanan, deceased, the latter having died on the 1st of May 2023,*
2. *Costs to be costs in the claim; and*
3. *Such further or other relief as his Honourable Court deems fit.*

**[3]** On March 19, 2024, Mrs. Sonia Clare-Bucknor filed a Notice of Application for Court Orders and further on April 4, 2024, she filed an Amended Notice of Application for Court Orders seeking the following orders:

1. *That she be appointed Administratrix Ad Litem in the estate of Elgiva Buchanan (otherwise called Judith Buchanan) deceased (testate).*
2. *That she be substituted in the stead of Elgiva Buchanan (deceased) testate as Claimant and/or Defendant as appropriate in claims numbered 2016 HCV01579, HCV02371 and 2017 HC/02319.*
3. *That such further and other orders and/or relief that this Honourable Court deems fit be granted.*
4. *That cost of the application shall be in the claim*

[4] The parties filed written submissions and made further oral submissions which were all considered by the Court. For the sake of clarity and ease of reference, I will refer to the parties by their first names. This manner of reference is not meant to be a sign of disrespect to any party.

### **DWAIN BUCHANAN'S EVIDENCE**

[5] I will provide a brief summary of Dwain Buchanan's ("Dwain") evidence. By an order made in this court on May 31, 2022, Dwain was appointed the duly authorized committee representing Mr. Banfield Buchanan ("Banfield"), his father. By way of the Last Will and Testament of Elgiva Buchanan (Elgiva) who died on May 1, 2023, Dwain was named her executor. Elgiva, before her death, was the sole executrix named in the estate of Fredel Buchanan ("Fredel") by virtue of his Last Will and Testament.

[6] Dwain's evidence is that Elgiva was his aunt and that she adopted him when he was very young and sent him to school. He stated that he lived with her for almost 40 years right up until her death and she was like a mother to him, and he took care of her and was her caregiver for most of his life.

[7] He stated that Mrs. Sonia Clare-Bucknor ("Sonia") was never an integral part of Elgiva's life and even when Elgiva became ill, Sonia was not a part of their lives. He added that it was only in December 2022, before Elgiva died, that Sonia visited her at her home and at the hospital.

[8] Dwain said that he was unaware of Sonia assisting Elgiva in mounting a defence or participating in the consultations, as most of the times he was present when Elgiva was meeting with her lawyers. He stated that Sonia was not Elgiva's aide and was only self-motivated and was not interested in securing

Elgiva's interest nor the interest of any of the beneficiaries of her estate. He stated at paragraph 4j of his Affidavit in Response to the Affidavit of Sonia Clare Bucknor:

*That I am further advised by my attorneys and sincerely believe that the claims remain separate claims although they are consolidated to be tried together. That unless the court orders that the grant of administration made to Diviennette Buchanan is unlawful and sets it aside, Auntie will not be a defendant in the claim brought by my father. That this is the reason why my present attorneys believe that the matter brought by Auntie in the estate of Fredel Buchanan should be tried separately, as the issues are not the same.*

- [9] Dwain stated that Sonia was not a suitable candidate since her conduct in the past has demonstrated that she does not take the processes of the court seriously having previously ignored the proceedings, up until recently, even though she was fully aware of them. He argued that Sonia was not just mentioned in the proceedings before the court but was a party and has chosen to disregard the claim filed against her.
- [10] Dwain stated that he was a farmer and businessman who had operated his farming endeavours and dealt with all aspects of his father's and Elgiva's business for many years. He asserted that he was more than competent to continue to do so.
- [11] He denied any conflict between the interests of his father and Elgiva's estate in the proceedings. He clarified that his father's claim targeted the administrator of Fredel's estate and the representative of Jabez Buchanan's ("Jabez") estate, while Elgiva challenged the grant of administration based on the existence of a will naming her as executrix. He asserted that both he and Elgiva shared the objective of a fair distribution of the properties among family members. He also supported her in caring for his father. He highlighted that he managed her affairs under a Power of Attorney from 2014, whereby he handled leases, and collected rent on her behalf.
- [12] Dwain categorically denied acting against Elgiva's estate's interest or personally profiting from rental proceeds. He stated that all funds collected after Elgiva's passing were used to pay outstanding legal fees, property

maintenance, taxes and debts owed by Elgiva before she died. He said he also gave monies to Sonia for her to pay Elgiva's funeral and testamentary expenses. He disputed allegations raised by Sonia and challenged her to provide proof of any conflict or mismanagement attributed to him.

- [13] Dwain stated that shortly after Elgiva's passing, Sonia approached her tenants and informed them she was now in charge and should receive the rents. He claimed she misrepresented herself as executor of the estate because she was driven by a persistent interest in accessing Elgiva's finances. He alleged that in April 2023, she attempted to obtain \$4,000,000.00 from Elgiva's resources, contrary to the deceased's express instructions.
- [14] Addressing concerns about his health, Dwain acknowledged past medical issues from an accident but stated he had recovered and had been active in the court proceedings. He contrasted his condition with Sonia's age (being over 70 years) and questioned her fitness and suitability. He further argued that her appointment would cause further discord and delay in the proceedings.

#### **SONIA CLARE-BUCKNOR'S EVIDENCE**

- [15] Sonia's evidence was contained in her affidavit filed on March 19, 2024. She acknowledged that she was the biological niece of Elgiva, who died intestate and unmarried with no children by birth or adoption.
- [16] Sonia stated that prior to her death, Elgiva initiated Claim No. 2016 HCV 01519 (hereinafter referred to as "Claim No. 1") in the Supreme Court of Judicature of Jamaica, naming Diviennette Williamson ("Diviennette") and her husband, Navarro Williamson ("Navarro"), as Defendants. That claim sought to revoke the Letters of Administration granted to the 1<sup>st</sup> Defendant (Diviennette) in the estate of her biological father, Fredel, who died testate on 3 September 2013 and was Elgiva's brother. The claim also sought to reverse fraudulent acts allegedly committed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against Fredel's estate, of which Elgiva had been appointed executrix under the Last Will and Testament of Fredel Buchanan.

- [17] Sonia further stated that the deceased was later named as a Defendant in Claim No. 2017 HCV 02371 (hereinafter referred to as “Claim No. 2”) filed by Kevin Buchanan and JB Trust Limited. Sonia pointed out that she was the person named as the 2<sup>nd</sup> Defendant in Claim No. 2 but was incorrectly included on the basis of being the executrix of the estate of her late mother, Jean Hall, which in effect she was not. She asserted that upon receiving legal advice and given the magnitude of the claim, she did not directly participate in the proceedings as 2<sup>nd</sup> Defendant but worked closely with Elgiva in preparing her defence, providing assistance and information. She maintained that she shared the views, interests, and sentiments expressed in Elgiva’s affidavits filed in support of and in response to the claims referenced above. Sonia added that for several years, Elgiva was represented by Mr. John Thompson, Attorney-at-Law, and she maintained regular, substantive communication with her, assisting her consistently and fully endorsing her legal positions.
- [18] Sonia further stated that although Elgiva was not named in Claim No. 2017 HCV 02319 (hereinafter referred to as the “Claim No. 2”) filed by Banfield with Kevin Buchanan (“Kevin”) and Diviennette as Defendants, she (Elgiva) became a party to it by virtue of an order made by Justice Pusey J (Ag) on 30 April 2018 consolidating all three claims. It was on that basis that the three claims could not proceed without the appointment of a representative for Elgiva in the proceedings.
- [19] She has consented to be appointed as Administratrix and confirmed her willingness and readiness to act in that capacity. Sonia stated that she held no interest adverse to that of the deceased and added that she has supported Elgiva personally and extensively since the commencement of the proceedings, particularly regarding the estate of her late brother, Fredel. She confirmed her close relationship with Elgiva, having worked with her for years, and understood her desire to see her late brother’s estate properly administered.
- [20] Sonia pointed out that she was a beneficiary of Elgiva’s estate, along with other potential beneficiaries, including parties to the consolidated claims. She stated that Elgiva intended for the offspring of the Buchanan brothers, who collectively had no legal interest in the disputed properties but were beneficiaries of the

properties which were held on trust under the names of Jabez and Fredel Buchanan, to benefit equitably from them.

- [21]** Sonia declared her belief in the existence of a constructive trust under which the property-primarily used for sugar cane farming was registered in the names of Jabez and Fredel on behalf of their other brothers. The brothers operated collectively, with varying roles informed by literacy and temperament, and the registered individuals were entrusted to act on behalf of the entire Buchanan Brothers Partnership. She noted that despite the passing of Jabez nearly fifty years ago and Fredel approximately eight years ago, the surviving brothers continued in possession and occupation of the subject property, maintaining the business structure established by the partnership.
- [22]** Sonia stated that since 2012, the Claimants, Kevin and JB Trust Limited (in Claim No. 3) have sought to enlist members of the extended family, sometimes to their unsuspecting disadvantage, in an attempt to claim the entire property which, they knew or ought to have known, was held on trust by the late registered owners, Jabez and Fredel, for all members of the Buchanan Brothers company. She said that both she and Elgiva wholly rejected this action by the Kevin and the Company.
- [23]** Sonia further stated that she had both the knowledge and vested interest to represent Elgiva (who she refers to as Aunt Judith) in opposition to Diviennette and Navarro, who, whether individually or jointly, have committed numerous dishonest and egregious acts against Fredel's estate.
- [24]** Sonia affirmed her unwavering commitment to Elgiva's estate and gave her undertaking to proceed diligently and faithfully in the conduct of these proceedings. She stated that she was a competent and experienced businesswoman, fully capable of representing her late aunt, Elgiva, in these proceedings. She declared that to the best of her knowledge no application for a Grant of Letters of Administration or other representation has been filed at the date of this application.
- [25]** She stated that she received verbal consent from certain beneficiaries urging her to proceed on behalf of Elgiva's estate and is awaiting written confirmation.

Sonia stated that Banfield suffers from apparent dementia and is mentally incapable, leaving Dwain to act on his behalf in these matters. She contended that Dwain has not acted in the best interest of Elgiva's estate, having intermeddled with rental proceeds without accounting to beneficiaries or others. She further stated that, although aspects of Banfield's claim was aligned with Elgiva's position, there are other elements which may be in direct contradiction, rendering it illogical and impractical for Dwain to represent both parties.

[26] She also pointed out that Dwain suffers from health limitations which were previously brought to the Court's attention. In light of the above, she prayed for an order appointing her as Administratrix Ad Litem and for her substitution as Claimant or Defendant, as required, in place of Elgiva in these proceedings.

## ISSUES

[27] The issues to be determined are as follows:

1. Whether Dwain Buchanan is the personal representative in the estate of Elgiva Buchanan?
2. Whether a conflict of interest arises in Dwain Buchanan's representation of the interests of both Banfield Buchanan and Elgiva Buchanan?
3. Whether Sonia Clare-Bucknor should be appointed Administrator Ad Litem in the estate of Elgiva Buchanan?
4. If not, whether the Administrator General should be appointed Administrator Ad Litem in the circumstances?

## LAW

[28] Beresford Hay in his text **An Introduction to The Law of Succession**, at page 35 stated that:

*"Personal Representatives are either executors or administrators. They administer the estate of the Deceased."*



- [29] The Civil Procedure Rules (“CPR”) Part 21 permits the court to appoint a representative Claimant or Defendant. CPR Part 21.7 states:

*Proceedings against estate of deceased person*

- 21.7 (1) *Where in any proceedings it appears that a deceased person was interested in the proceedings then, if 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.*
- (2) *A person may be appointed as a representative if that person –*
- (a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and*
  - (b) has no interest adverse to that of the estate of the deceased person.*
- (3) *The court may make such an order on 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.*
- (5) *A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.*

*Power of court to give directions to enable proceedings to be carried on after party's death*

- 21.8 (1) *Where 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] Based on the above it is patently clear that the court is permitted to make an order to appoint a personal representative in proceedings where the deceased person had an interest in circumstances where there is no personal representative. The appointed individual must be able to fairly and competently conduct proceedings on behalf of the deceased person and should have no adverse interest to the estate of the deceased person.

- [31] In the case of **Ray Electra Jobson-Walsh (Administrator ad litem for deceased of Gilbert Baron Jobson, deceased) et al v Administrator General of Jamaica (Administrator of the estate of Gilbert Baron Jobson, deceased) et al** [2013] JMSC Civ 132, Anderson K. J stated in paragraph [22]:

[22] *There is no doubt, firstly, that as many legal authorities make it clear, it is a general rule that **administrators ad litem will typically be appointed by a court, in circumstances wherein no one has been appointed by the court as an administrator of the deceased's estate and a claim is required to be brought either by that deceased's estate, or alternatively, against that deceased's estate.** See: Parry and Clark – The Law of Succession, (11th ed.), at p. 439. Emphasis mine.*

**Issue 1: Whether Dwain Buchanan is the personal representative in the estate of Elgiva Buchanan?**

- [32] In the case of **Tanya Ewers (Executrix of the estate of Mavis Williams) v Melrose Barton Thelwell** [2017] JMCA Civ 26 Brooks JA outlined the court's power to appoint a personal representative. He stated at paragraph [24]:

*"[24] ... a representative, which could be a named executor, first has to be appointed by the court to act for a deceased defendant, before that person can act on behalf of the estate of that defendant. Rule 21.7(4) requires the court to appoint a representative before the case can proceed...."*

- [33] Dwain said he discovered the Last Will and Testament of Elgiva Buchanan dated March 1, 2023, wherein he was named the executor. That Will has not yet been probated and as such he would need to be first appointed by the court to qualify as the personal representative of her estate. Dwain's appointment is however being challenged on the basis that a conflict of interest arises in his appointment as committee for Banfield and Executor for Elgiva's estate in the claim. The court therefore must determine whether a conflict of interest exists.

**Issue II: Whether a conflict of interest arises in Dwain Buchanan's representation of the interests of both Banfield Buchanan and Elgiva Buchanan's estate?**

- [34] The court must determine whether a conflict arises in the interests of Banfield and Elgiva's estate which would disqualify Dwain from representing them both in the case at bar. In order to determine whether there is in fact a conflict, the court has to examine the cases of both Elgiva and Banfield.

[35] Kevin in his capacity as Administrator in the estate of Jabez Buchanan has brought a claim (Claim No. 3) against Elgiva and Banfield in their personal capacity as partners in the Buchanan Brothers, a limited liability company. The subject of the application are two properties, namely, all that parcel of land comprised in Certificate of Title registered at Volume 1118 Folio 141 of the Register Book of Titles and the property being all that parcel of land in the parish of Hanover (hereinafter referred to as the **Spring Valley Property**) and all that parcel of land parts of Glasgow Estate and Masemure known as Forrest Mountain in the parishes of Hanover and Westmoreland comprised in Certificate of Title registered at Volume 1097 Folio 235 of the Register Book of Titles (hereinafter referred to as **the Glasgow Property**) which are registered in the names of Fredel Quentin Buchanan and Jabez Ulysses Buchanan also known as Ulysses Jabez Buchanan.

[36] The gravamen of Kevin's claim, in so far as it affects this particular application, is his request for an injunction restraining the Defendants in their capacity as partners in the Buchanan Brothers company from intermeddling in the Estate of Jabez Buchanan.

### **Banfield Buchanan's case**

[37] Banfield Buchanan initiated a claim (Claim No. 2) by way of Claim Form and Particulars of Claim against Kevin Buchanan and Diviennette Buchanan-Williamson seeking the following:

- (i) A declaration that the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan holds on trust in equal shares the property known as all those parcels of land parts of Spring Valley Estate in the parish of Hanover registered at Volume 1118 Folio 141 of the Register Book of Title and the property known as all those parcels of land parts of Glasgow Estate and Masemure known as Forest Mountain in the parishes of Hanover and Westmoreland registered at Volume 1097 Folio 235 of the Register Book of Titles for the Buchanan Brothers, namely Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan and the Claimant, Banfield Buchanan;*
- (ii) A declaration that the Estates of Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan and the Claimant, Banfield Buchanan all have a beneficial or equitable interest in the properties listed in order number 1 above.;*

(iii) *A declaration that a constructive trust was established in favour of the Estates of Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan and the Claimant, Banfield Buchanan;*

(iv) *An order that the properties listed in order number 1 above be transferred in equal shares into the names of the Estates of Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan and the Claimant, Banfield Buchanan;*

(v) *An order empowering the Registrar of Titles to cancel the Certificates of Title registered at Volume 1118 Folio 141 and Volume 1097 Folio 235 in the Register Book of Titles in the names of Ulysses Jabez Buchanan and Fredel Buchanan and to issue new certificates of title in respect of the said properties in the names of the Estates of Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan and the Claimant, Banfield Buchanan as tenants in common in equal shares;*

**(vi) *In the alternative, a declaration that the Claimant has been in open, exclusive and undisturbed possession and occupation against the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan of the property known as all those parcels of land parts of Glasgow Estate and Masemure known as Forest Mountain in the parishes of Hanover and Westmoreland registered at Volume 1097 Folio 235 of the Register Book of Titles for a period of twelve (12) years and upwards immediately prior to the commencement of this action;***

**(vii) *A declaration that by virtue of the Claimant's absolute possession and occupation of the said property for a period of twelve (12) years and upwards immediately prior to the commencement of this action to the exclusion of all others, the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan discontinued possession and / or were dispossessed of the said property and the Claimant remained in possession and occupation of the property for a period of twelve (12) years and upwards immediately prior to the commencement of this action;***

**(viii) *An order that the Claimant having been in possession and occupation of the property for upwards of twelve (12) years immediately prior to the commencement of this action to the exclusion of the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan; the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan is barred by virtue of section 9 of the Limitation of Actions Act 1881 from re-entering the property; (emphasis mine)***

(ix) *An order that by virtue of sections 3, 4, 9 and 14 of the Limitation of Actions Act 1881, the Claimant having been in possession and occupation of the premises for upwards of twelve (12) years immediately prior to the commencement of this action have acquired an absolute title of the property against the Estate of Ulysses Jabez Buchanan and the Estate of Fredel Buchanan;*

(x) *An order that the title held by Ulysses Jabez Buchanan and Fredel Buchanan to the property known as all those parcels of land parts of Glasgow Estate and Masemure known as Forest Mountain in the parishes of Hanover*

*and Westmoreland registered at Volume 1097 Folio 235 of the Register Book of Titles is hereby extinguished;*

*An order empowering the Registrar of Titles to cancel the Certificate of Title registered at Volume 1097 Folio 235 in the Register Book of Titles in the name of Ulysses Jabez. Buchanan and Fredel Buchanan to issue a new certificate of title in respect of the said property in the name of the Claimant;*

*(xii) Costs.*

*(xiii) Further or other relief as this Honourable Court shall deem fit.*

**[38]** In his Particulars of Claim, Banfield indicated that it was a mutual agreement between himself and his brothers (*Abijah Buchanan, Gladstone Buchanan, Jessurien Buchanan, Fredel Buchanan, Ulysses Jabez Buchanan*) that the Spring Valley property would be purchased in the names of Ulysses Jabez Buchanan (“Jabez”) and Fredel Buchanan (“Fredel”) because they were more well-known and could read and write very well.

**[39]** As it relates to the Glasgow property, he stated that all 6 brothers including himself collectively agreed that they would purchase the said land for their benefit in the names of Jabez and Fredel. He added that the lands were paid for by all six brothers including himself, and that it was agreed between himself and his brothers that all the farming business would be done under the name of the Buchanan Brothers Partnership.

**[40]** Banfield however at paragraph 15 of his Particulars of Claim alluded to a claim for adverse possession in relation to the Glasgow property. He stated thus:

*15. Further, the Claimant has been living on the lands parts of Glasgow Estate and Masemure known as Forest Mountain in the parishes of Hanover and Westmoreland registered at Volume 1097 Folio 235 of the Register Book of Titles since 1973. The land at Glasgow was purchased by the brothers with an old house on it. The Claimant moved into the old house in 1973. It was a concrete and board three (3) bedroom house. The Claimant did not receive permission from anyone to move into that old house on the land. The Claimant has never paid anyone rent for living in that house. In 1989, the Claimant re-constructed the house into a concrete four (4) bedroom house. It has now been over forty (40) years since the Claimant has been living in that house on the property at Glasgow to the exclusion of all others. The Claimant has been in actual, peaceable, continuous, exclusive, open, undisturbed and undisputed possession and occupation of the Glasgow property, and of the house and the buildings and equipment used in connection therewith since 1973 and continuously thereafter until the present time.*

- [41] It is noted that Banfield's case (Claim No. 2) names the Estate of Fredel Buchanan as a party, through the Administrator, Diviennette Buchanan-Williamson, and further if his claim in trust fails, he will pursue an alternate claim for adverse possession in relation to the Glasgow property.

***Elgiva Buchanan's case***

- [42] Elgiva Buchanan ("Elgiva") filed a Fixed Date Claim Form on April 14, 2016 against Diviennette Buchanan-Williamson ("Diviennette") and Navarro Williamson ("Navarro") whereby she sought an order that the Court pronounce for the will of Fredel Buchanan in solemn form of law and revoke Letters of Administration for the Estate of Fredel Buchanan, deceased.

- [43] Elgiva, in her Affidavit in Support of Amended Notice of Application filed on 25 January 2018 in Claim no. 3 stated thus at paragraphs [16] and [17]:

*16. My brother Fredel died leaving a Will. I am the executor named therein in the Will of my brother Fredel.*

*17. I am also a beneficiary in the estate of my brother Fredel. In his Will, my brother Fredel left a section of his property being all that parcel of land in the parish of Hanover comprised in Certificate of Title registered at Volume 1118 Folio 141 of the Register Book of Titles to me. Further, he left all of his property being all that parcel of land in the parishes of Hanover and Westmoreland comprised in Certificate of Title registered at Volume 1097 Folio 235 of the Register Book of Titles to me. Therefore, I am beneficially entitled to my brother, Fredel's interest in the subject properties which he jointly owns with my other brother Jabez.*

- [44] Elgiva further stated at paragraphs [28]-[30] of the said Affidavit:

*28. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants are not entitled to do what they are doing because Jabez does not own the entire properties at Glasgow Estate and Spring Valley Estate. The properties are held jointly as tenants in common with Fredel. I am the executor of my brother, Fredel's estate and beneficially entitled to Fredel's interest in those properties. Furthermore, I honestly believe that all of the Buchanan Brothers have an interest in the subject properties.*

*29. Further there is no declaration from this court as to how much interest Jabez has in any of these two pieces of property.*

*30. I do not believe that Jabez's estate is entitled to 50% interest in any of these properties because, the properties were purchased in 1973 and 1975 and Jabez died in 1977. Therefore Jabez did not and could not have paid the entire purchase price for the properties because the*

*properties were purchased under a mortgage. The purchase price for both pieces of property was fully paid up by Fredel and the Buchanan Brothers Partners including me. Therefore, I will be seeking a declaration from this Honourable Court as to the interest that Jabez has in these two pieces of properties.*

- [45] There are two things to note in Elgiva's case. Firstly, if Elgiva is successful in her claim against Diviennette and Navarro, she would in effect become the executor in Fredel's estate. Secondly, pursuant to the Last Will and Testament of Fredel, his interest in the Glasgow property was devised to Elgiva.

### **Submissions**

- [46] The submissions reveal a marked difference between Counsel for Dwain and the opposing parties. Mrs. Ingrid Clarke-Bennett, for Dwain, maintained that no conflict of interest exists, as Banfield's and Elgiva's legal positions are aligned, and any potential conflict is speculative or premature given the unresolved status of Elgiva's executorship. She contended that Dwain was therefore a suitable and impartial candidate for Administrator Ad Litem. In contrast, Counsel for Sonia, Kevin, Navarro and Diviennette unanimously oppose his appointment, asserting that Dwain's dual representation in active litigation, on behalf of Banfield and the Estate of Elgiva, created a clear and irreconcilable conflict. They argued that such duality compromised impartiality, contravened the Civil Procedure Rules, and undermined both procedural fairness and the appearance of justice.
- [47] Counsel for Dwain submitted that Banfield (through Dwain) was not suing Elgiva as representative of Fredel's Estate because that role was currently held by Diviennette. She argued that Elgiva's claim to prove Fredel's will and nullify Diviennette's appointment, has not yet been determined and so it was premature to assume Elgiva's claim would be determined in her favour for the purpose of assessing the issue of Dwain's appointment as Administrator Ad Litem in Elgiva's estate.
- [48] She further argued that even if Elgiva's claim succeeded against Diviennette, no conflict arose between Banfield's interests and those of Elgiva's estate. She

asserted that Fredel's will benefits Banfield with property in Spring Valley and half his interest in the Buchanan Brothers. The only property potentially falling to Elgiva's estate was Forrest Mountain (Glasgow Property), which also ultimately benefited Banfield as a main beneficiary.

- [49] Counsel argued that the Pre-Trial Memoranda of Banfield and Elgiva revealed a shared legal position without conflict and therefore, Dwain had no adverse interest to the estate of Elgiva and was a suitable candidate for appointment as Administrator Ad Litem.
- [50] Miss Russell, on behalf of Sonia, argued that Dwain had a clear conflict of interest as he seeks to represent both the deceased, Elgiva, and Banfield, for whom he has been appointed guardian. She said that this created a situation where he would have to deal with multiple parties with potentially conflicting outcomes and clashing or potentially clashing interests. She pointed out that Banfield, in Claim No. 2017 HCV 02319 (Claim No. 2), was seeking alternative reliefs including a claim for adverse possession, while Elgiva's position has consistently been that the properties belonged equally to the Buchanan Brothers. Counsel submitted that Dwain cannot advance both positions without compromising one, particularly where the evidence and arguments for one would run counter to the other.
- [51] Counsel used the adage "One cannot serve two masters" to describe Dwain's attempt to represent both parties. She however acknowledged that if Dwain's application was denied, then Sonia was not automatically entitled to be appointed, as the Court must follow the criteria set out in Parts 27 and 29.1(3) of the CPR, and be guided by case law such as **Michael Henlin v Dexter Rose and others** [2022] JMSC Civ 206.
- [52] Counsel for Navarro and Diviennette, Mr. Willwood Adams, submitted that Dwain's application for appointment as Administrator Ad Litem presents a clear conflict of interest. He stated that Dwain currently acts as representative of Banfield in Claim No. 3 as 3rd Defendant and in Claim No. 2 as Claimant. Counsel argued that if permitted to also represent the estate of Elgiva, who is the 2<sup>nd</sup> Defendant in Claim No. 3 and the Claimant in Claim No. 1, Dwain would



effectively be a Claimant and Defendant in the same cause. This dual representation, he submitted, created a direct clash of duties and potential for bias, contrary to the requirement that an Administrator Ad Litem ought to act impartially and avoid divided loyalties.

- [53]** Counsel argued that pursuant to Rule 21.4(4) of the Civil Procedure Rules (“CPR”), a representative under this rule may be either a Claimant or a Defendant, but not both, in respect of a party already before the court. He contended that both Dwain and Sonia are already involved in the consolidated proceedings, and their applications to now represent the deceased Elgiva would contravene this provision, leading to an impermissible overlap of representative roles.
- [54]** Counsel Mr. Adams further submitted that the circumstances surrounding the emergence of Elgiva’s Will, surfacing sixteen months after her death, meant that probate has not yet been granted and the issue of executorship remains unresolved. Mr. Adams contends that appointing either Dwain or Sonia at this stage would be premature and risk prejudicing pending matters. Counsel argued that the chain of representation, is reflected in Rule 21.8 of the CPR, which allows the court discretion but not at the expense of sound judicial reasoning. Counsel submitted that to grant an Administrator ad litem order to either party, under these conditions, would create a spectacle of the absurd, compromise impartiality, and erode the integrity of the litigation process.
- [55]** Counsel Mrs. Ann-Marie Fuertado Richards on behalf of Kevin similarly submitted that Dwain’s candidacy for appointment as Administrator Ad Litem was to be rejected because of a conflict of interest, as he currently represents Banfield by Committee in Claim No. 2 as Claimant and Claim No. 3 as 3rd Defendant.
- [56]** Counsel referred to Kevin’s affidavit sworn on May 22, 2024, where he stated that the conflict arose from the fact that Elgiva, in Claim No. 2016 HCV 01519 (Claim No. 1), sought to revoke the Grant of Administration issued to Diviennette and be declared Executrix of Fredel’s Estate. Simultaneously, Banfield, in Claim No. 2017 HCV 02319 (Claim No. 2), is suing both the Estates

of Fredel Buchanan and Jabez Buchanan, seeking among other things, declarations based on adverse possession.

- [57] Mrs. Feurtado Richards argued that Dwain's dual representation would create foreseeable conflicts, as he would be required to defend Banfield's adverse possession claim against Fredel's estate, while also acting on behalf of Elgiva, who claims to be Executrix and beneficiary of that very estate.
- [58] Counsel submitted that given that the property in issue, Glasgow Estate, was jointly owned by Fredel and Jabez Buchanan, and was central to the adverse possession claim in Claim No. 2, Dwain's involvement would render him both Claimant and Defendant in the same claim, a position that was legally untenable. Counsel further submitted that the principle that an Administrator Ad Litem must fairly and competently conduct proceedings necessitates that the court rejects any appointment where a clear conflict of interest exists. She argued that the courts have consistently held that in such instances, the interest of justice demands the applications be refused.
- [59] Mrs. Feurtado Richards submitted that Counsel Mrs. Clarke-Bennett's support for dual roles, that is separating Dwain's position as representative for Banfield from that for Elgiva, was legally untenable. She added that estate administration does not permit a single individual to represent diametrically opposed parties within the same litigation. Counsel further submitted that the Pre-Trial Memorandum filed June 4, 2021, further compounds the issue, as it explicitly seeks declarations that directly conflict with the estate interests of Elgiva, including trust claims and adverse possession claims over shared properties. She submitted that the legal standard that "justice must not only be done but must appear to be done" was directly engaged and that the appointment of Dwain would undermine procedural integrity and create unfairness and confusion.
- [60] Ultimately, Counsel concluded that due to an irreconcilable conflict of interest, Dwain was not a suitable candidate for Administrator Ad Litem, and the court must appoint an independent representative such as the Administrator General for Jamaica to preserve the impartial administration of justice.

## ANALYSIS

- [61] In determining whether a conflict would arise in Dwain's representation of both Banfield and Elgiva's estate, the court bears in mind several issues. It is noted that Elgiva had instituted proceedings seeking to revoke the grant of Administration issued to Diviennette and to prove Fredel's will in solemn form, which, if she was successful would result in her being appointed the sole executrix in Fredel's estate.
- [62] Banfield in his claim, has named Fredel's estate as a Defendant through its Court appointed Administrator, Diviennette, who Elgiva was trying to have removed. Should Elgiva's claim succeed, she would replace Diviennette as personal representative in Fredel's Estate and would therefore step into Diviennette's role (as a Defendant) in the proceedings instituted by Banfield. Consequently, if Dwain was appointed to act for both Elgiva's estate and Banfield, he would in effect be acting on both sides of the same claim thereby creating a clear conflict of interest, an absurdity and legally impermissible as pointed out by the several opposing counsel.
- [63] I do not agree with submissions put forward by Dwain's Counsel that since Elgiva's claim was pending, it was premature to assume Elgiva would be the estate's executor for the purpose of assessing conflict. The potential for a conflict, in my view does not depend on whether Elgiva has been formally appointed as Executrix, but rather, on the nature of her claim and likelihood that she may be successful. If she is in fact successful, Dwain would be placed in an untenable position representing both Claimant and Defendant in the same proceedings. I therefore agree with the submissions of opposing Counsel that a conflict does in fact arise.
- [64] Additionally, Banfield in his case, claims that the properties (Spring Valley and Glasgow) were bought by all six brothers under a mutual agreement that Jabez and Fredel would hold the title in trust for all the brothers. Elgiva, in her case, while she acknowledges that the properties should belong to all the brothers, claims that she is entitled to Fredel's beneficial interest under the will.

[65] Banfield alternately claims adverse possession over the Glasgow property being in possession since 1973 to the exclusion of his brothers to include Fredel and Jabez. However, on Elgiva's claim, she contends that Fredel died leaving his interest in the Glasgow property to her. Further, if Elgiva is appointed the executrix of Fredel's estate, her personal representative would be obliged to defend this claim on behalf of Fredel's Estate against Banfield.

[66] In the case of **Murray and Anor v Petros** [2020] JMCA App 4 where Mrs. Murray sought direction to enable her to carry on proceedings after the death of her husband. The court ordered that Mrs. Murray be substituted for her husband in her capacity as personal representative for his estate for the purpose of hearing the application. McDonald-Bishop JA stated at paragraph 20 of the judgment:

*"[20] As submitted by Mrs. Davis, Mrs. Murray's interests in these proceedings are clearly not in conflict with that of the estate of Mr. Murray, when the facts from which the matter has emanated are considered. She is named as executor to Mr. Murray's estate, and the sole beneficiary under the purported will. Even if the will were to be declared invalid, she as his spouse would be entitled to share in his estate on intestacy and would be absolutely entitled to his personality. Furthermore, and even more significantly, she has been party to these proceedings with Mr. Murray since its inception and they both share identical interest in the outcome of these proceedings as well as the substantive appeal.*

*I could discern no potential conflict of interest and risk of injustice in appointing her for the limited purpose of the hearing of these applications, which were originally filed by Mr Murray, in his own right, with her as co-applicant. Mrs Murray was regarded as someone who would be able to fairly and competently carry on these proceedings on her own behalf as well as on behalf of the estate of Mr Murray.*

[67] In this application, I cannot so find. If the Court were to appoint Dwain as Administrator Ad Litem, a clear conflict would arise due to the competing interests of Banfield and Elgiva's estate. Whilst it is noted that both parties (when Elgiva was alive) shared the same Counsel in Mrs. Clarke-Bennett, who submitted that the Pre-Trial Memoranda of Banfield and Elgiva revealed a shared legal position, the evidence speaks for itself. It is strongly recommended that Counsel give serious consideration to the way forward in these

proceedings in respect of her representation of both parties. A clear conflict would arise, and this therefore precludes Dwain being appointed as Administrator Ad Litem in the Estate of Elgiva.

**Issue III.: Whether Sonia Clare-Bucknor should be appointed Administrator Ad Litem in the estate of Elgiva Buchanan?**

- [68] In determining whether Sonia Clare-Bucknor should be appointed Administrator ad litem in the Elgiva's Estate, the court must assess whether she can fairly and competently conduct proceedings on behalf of the estate of the deceased and whether she has any interest adverse to that of the estate of the deceased.
- [69] It is noted that Counsel, Mrs. Bennett-Clarke on behalf of Dwain, submitted that Sonia was not a fit candidate for appointment since until her most recent application, she had shown scant regard for the Court's process. She argued that there was no document which predated Sonia's application which indicated her position with respect to the claim made against her as the executor of her mother's estate. Counsel asserted that the court should take note of the fact that Elgiva had several pending contested applications before her death and Sonia had not indicated whether she had any knowledge of these.
- [70] Counsel for Sonia, Miss Russell, on the other hand, submitted that her client was a fit candidate on the basis that she had supported her application with affidavit evidence and had responded to the attempts by Kevin and Dwain to prove her unfit. Counsel submitted that the affidavit filed by Kevin ought to be given little weight, describing him as one of the most litigious parties to the matters. Miss Russell asserted that Kevin's affidavit, filed in response to those of Dwain and Sonia, was scandalous and replete with unsubstantiated hearsay and gossip. Counsel indicated that, in hindsight, an application to strike it out would have been appropriate. She argued that Kevin's efforts to have the Court reject both Applicants is a self-serving narrative that had been consistently unsuccessful.

- [71] Counsel relied on the case of **Michael Henlin v Dexter Rose and other** [2022] JMSC Civ 206 and submitted that Sonia was capable of fairly and competently conducting the proceedings on behalf of the estate and that she held no interest adverse to it. She argued that any adverse interest must relate to the estate's representation in litigation, and that no such conflict existed. She added that the powers of representation under Part 27 were limited, and the attempts to discredit her client by raising issues such as funeral expenses, tenant removals, or caregiving responsibilities, were irrelevant, even if not expressly denied or already explained.
- [72] Counsel further submitted that the relationship between her client and Elgiva was close and amicable. She pointed to Dwain's reference to Elgiva's Scotia Mint investment account and other accounts held in trust by Sonia, was said to demonstrate Elgiva's confidence in her and the existence of a personal relationship grounded in trust.
- [73] Counsel for Kevin however submitted that Sonia was not a fit and proper person to be appointed as Administrator Ad Litem for the Elgiva's Estate, and that her candidacy ought to be rejected on that basis. Reference was made to paragraphs 8 to 15 of Kevin's affidavit, which identified the grounds on which he opposed her appointment, including concerns related to her suitability, integrity, and potential conflicts of interest. Kevin also stated that she was not a beneficiary of the estate, as she was neither spouse, child, parent, nor sibling of the deceased, and that Elgiva died intestate, survived only by her brother, Banfield.
- [74] Kevin recounted that Sonia expressed to him her intention to manage family properties exclusively with Anthony Buchanan and to exclude others. He also stated that she had been collecting rental income from properties forming part of Fredel's estate without proper accounting. He further alleged that despite her financial involvement in the Buchanan Brothers partnership since 2014, she denied being a partner. He noted her failure to support Elgiva during the proceedings, by filing any affidavit, and her disregard for the court processes when named as a defendant.

- [75] Mrs. Feurtado Richards further submitted that the appointed Administrator Ad Litem must possess a reputation for honesty and integrity, and that the Court should consider any history of dishonesty, mismanagement, or other conduct that may affect the proper administration of the estate. While Sonia had, through her affidavit, stated that she was fit and proper, Counsel maintained that she did not meet the requisite standard.
- [76] Counsel submitted that her appointment would risk compromising the administration of the estate and raise legitimate concerns regarding transparency, mismanagement, and conflicts of interest. In the interest of the estate, it was urged that the Administrator Ad Litem should be an objective party with no appearance of self-interest.

## **ANALYSIS**

- [77] The evidence does not support Sonia's assertions. Her statements that she assisted Elgiva in mounting her defence is unsubstantiated by any evidence contained in any affidavit from Elgiva. On the contrary, the evidence of Elgiva, Dwain and Kevin demonstrate that Sonia has been absent throughout the course of these proceedings. There was no evidence indicating her participation at any time. Very little weight will however be given to those portions of Kevin's affidavit as it relates to the hearsay evidence.
- [78] An analysis of the evidence revealed that Sonia was personally served with court documents relating to this matter on August 2<sup>nd</sup>, 2017. Despite this, she has failed to acknowledge service and failed to file any affidavits in this matter until the present application before the Court. I am of the view that this constitutes a blatant disregard for the Court. Her conduct leads the Court to question her ability and willingness to manage her responsibilities as Administrator Ad Litem, if she were to be appointed. The fact that she claimed she was erroneously added to the claim does not absolve her of the necessity to show respect to the Court and to act in a responsible manner and respond to the claim.
- [79] I am also of the view that the timing of Sonia's sudden interest in this claim, only after the death of Elgiva, raises concerns as to the genuineness of her

actions. On the evidence presented before the court, it appears that Sonia was absent from these proceedings during Elgiva's lifetime notwithstanding that these proceedings were brought to her attention from as early as August 2017. Had she in fact enjoyed the close relationship with Elgiva as she claims in her evidence, one would reasonably expect some evidence of her involvement or assistance. The complete lack of any evidence in this regard leads me to question her credibility and further leads me to the conclusion that her intentions may be self-serving rather than any legitimate concern for Elgiva's estate.

[80] Additionally, the evidence further shows that Sonia has intermeddled in Elgiva's estate. This was candidly admitted by Counsel Miss Russell, who sought to justify her client's conduct by stating that Sonia was doing what she thought was fit and proper to protect her aunt's (Elgiva's) estate given that for a prolonged period there was no will until it was suddenly uncovered. It is my view however, that whilst her intention may have been *prima facie* well intended, this does not excuse her actions.

[81] In the case of **Howard Jacas (Executor estate Sylbert Juan Jacas, deceased) v Bryan Jacas et al** [2014] JMSC Civ 190, the court stated the following at paragraph [26] in relation to intermeddling:

*[26] Where a person intermeddles in an estate in such a way as to denote the assumption of authority or an intention to exercise the functions of an executor he may be treated as an executor de son tort. **Such a person is liable to be sued by the rightful representative, beneficiaries and even creditors. It should also be noted that the slightest acts of interference are sufficient to attract that designation.** A definition of this term was given in *Peters v. Leeder* (1878) 47 L.J.Q.B. 573 where Lush J said:*

*"An executor de son tort is 'one who takes upon himself the office by intrusion, not being so constituted by the deceased, nor for want of such constitution substituted by the Court to administer' (See *Williams on Executors*, cap 5.) The definition implies a wrongful intermeddling with the assets, a dealing with them in such a way as denotes a usurpation of the functions of an executor, an assumption of authority which none but an executor or administrator can lawfully exercise." (emphasis mine)*



- [82] Further, the fact that Sonia took it upon herself to act in relation to the estate when no will had been presented and in absence of any grant of administration was further evidence of her disregard for the authority of the court, especially bearing in mind that up to that time she had not made an appearance in the matter, neither did she make an application to the Court for Letters of Administration. I find that her actions in this regard raises serious concerns as it regards her suitability to be entrusted with the role of Administrator Ad Litem in Elgiva's estate.
- [83] I also note that Sonia has indicated that she has received consent from certain beneficiaries to represent Elgiva's interest however, this is not a requirement in determining her suitability for appointment.
- [84] I therefore find that Sonia cannot fairly and competently conduct proceedings on behalf of Elgiva's estate and further, that she has an interest adverse to that of the deceased's estate. In the circumstances she does not meet the requirements to be appointed as an Administrator Ad Litem in Elgiva's estate.

**Issue IV: If not, whether the Administrator General should be appointed Administrator Ad Litem in the circumstances?**

- [85] Mrs. Fuertado-Richards, in her submissions, invited the Court to consider whether to appoint the Administrator General as the personal representative of Elgiva's estate. It is noted that Elgiva died a spinster with no children, and no personal representative has been appointed neither has a Grant of Probate been issued. The court, in these circumstances must consider whether the Administrator General for Jamaica would qualify as a suitable candidate to be appointed Administrator Ad Litem in Elgiva's estate. It is to be noted that the court is permitted by virtue of Part 21.7 (3) of the CPR to make such an order to appoint a personal representative on or without an application.
- [86] Section 12 of the **Administrator General's Act of Jamaica** states:

*"The Administrator-General shall be entitled to, and it shall be his duty to apply for, letters of administration to the estate of all persons who*

*shall die intestate without leaving a widower, widow, brother, sister, or any lineal ancestor or descendant, or leaving any such relative if no such relative shall take out letters of administration within three months, or within such longer or shorter time as the Court to which application for administration is made, or the Judge thereof may direct; and **also to the estates of all persons who shall die leaving a will but leaving no executor, or no executor will act, if no such relative as aforesaid of such deceased shall, within the time aforesaid, take out letters of administration to his estate. The Administrator-General shall be entitled to such letters of administration in all cases in which, if this Act had not been passed, letters of administration to the estates of such persons might have been granted to any administrator:** (emphasis mine)*

- [87] The court in the case of **The Administrator-General of Jamaica v Glen Muir** [2015] JMCA App 6 recognized the obligation placed on the Administrator General to act in circumstances where no legal representative has been appointed. The court had this to say at paragraphs [28] and [29]:

*“[28] Undoubtedly the Act imposes upon the Administrator-General the duty to act in the absence of an appointed legal representative of a deceased. It is manifest that an important consideration of the legislators for the inclusion of sections 12 and 23 is the recognition that a deceased’s identity disappears at his death and so too his ability to commence or continue actions and deal with matters of importance and urgency. [29] The Administrator-General ought to have been informed of the death of Mr Ledgister before the learned judge made the orders. Evidently, the proverbial horse was placed before the cart...”*

- [88] Based on the circumstances of this case, I do not believe that the appointment of the Administrator General as the personal representative of the estate ought to be the first course of action.
- [89] In the case of **Century National Bank Ltd et al v Windsor Commercial Land Company Ltd et al** Claim No. 1993 C.L.C. 363, delivered on 19<sup>th</sup> April, 2011, Brooks J (as he then was) made it clear that the Court has a discretion in appointing a representative for a deceased’s estate, and that this discretion must be exercised with a view to ensuring that the most suitable person is appointed that will allow the matter to proceed efficiently. The learned judge opined:

*There are options open to the court in the appointment of a representative; it may appoint the Administrator General for Jamaica; it could consider appointing Mr Crichton or appointing one of the beneficiaries of Mr Smith's estate.*

- [90] This statement makes it clear that the appointment of the Administrator General ought not to be the first option. It is a measure taken when there is no other qualified person who is available or willing to act. The court went on to state:

*The most appropriate appointee would, of course, be the individual who would allow this claim to proceed as quickly as possible. The court has to leave it to the parties to make that decision and to file the appropriate application, bearing in mind, of course, the great age of this claim. In order to ensure that there is some definite end to this hiatus, however, I shall order that the Administrator General be deemed appointed as the representative, if no application for a representative to be appointed, is filed by 29 July 2011.*

- [91] In **Century National Bank Ltd et al v Windsor Commercial Land Company Ltd et al** (supra), Brooks J (as he then was) only sought to appoint the Administrator General if there was no application made by any person to be appointed a representative of the estate by a certain date. In the circumstances, I am of the view that before the court seeks to appoint the Administrator General, further checks need to be made to determine whether there are beneficiaries of Elgiva's estate who can fairly and competently conduct proceedings on behalf of the estate and who have no interest adverse to that of the estate and are also willing to be appointed.

- [92] I note too that the Court could not appoint the Administrator General to act on behalf of Elgiva's estate without more, especially in circumstances where it is not clear whether the Administrator General has been notified of the proceedings or whether they have been informed of Elgiva's death. I therefore find that even though the Administrator General may appear to be a suitable body to be appointed as Administrator ad litem, the court cannot proceed in the absence of evidence indicating whether there is any other person or beneficiary named in the will who fulfils the qualification under the Rule 21.7(2) and is willing to act. The matter is therefore adjourned pending the provision of this information and the necessary application being made to appoint a personal

representative for the estate, failing which, the court may then consider whether the Administrator General ought to be appointed in the circumstances.

## **ORDERS**

**[93]** In the circumstances, I hereby make the following orders:

1. The orders sought in the Amended Notice of Application for Court Orders to Appoint a Representative for a Deceased Party filed on November 13, 2023, by Dwain Buchanan are refused.
2. The orders sought in the Amended Notice of Application for Court Orders filed on April 4, 2024, by Sonia Clare-Bucknor are refused.
3. Kingdom Chambers, the firm representing the estate of Elgiva Buchanan is to ascertain whether there are other beneficiaries of the estate who can fairly and competently conduct proceedings on behalf of the estate and have no interest adverse to that estate and the relevant person(s) can thereafter make the necessary application by May 21, 2025
4. No order as to cost.
5. The firm of Kingdom Chambers is to prepare, file and serve the order.