IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV00072

BETWEEN	**LELIETH WATTS**	**CLAIMANT**
AND	**SYDNIA MATHESON**	**DEFENDANT**

Trial in Chambers

Mrs. Georjean Edwards-Fullerton and Ms. Ayadede Pepple instructed by Deacon & Associates for and on behalf of the Claimant

Mr. Robert Collie and Mr. Adam Rattray instructed by Collie Law for and on behalf of the Defendant

Civil Practice & Procedure – Doctrine of Res Judicata – Who is entitled to the residuary estate – Fit and proper person to apply for Letters of Administration with Will Annexed – Section 20 of the Wills Act – Intestates' Estates and Property Charges Act – Declaration of Paternity – Status of Children Act– Sections 7 (1) (b) and 10 (2) of the Status of Children Act – Costs – Court's power to vary or revoke Orders made

Dates Heard: January 9 & 10, March 21 and April 11, 2024

PALMER HAMILTON, J.

BACKGROUND

[1] By way of a Fixed Date Claim Form filed on the 10th day of January, 2020 the Claimant is seeking the following Orders:

> *(1) A declaration that the Claimant is the sole beneficiary of the residuary estate under the Will dated the 24th of June 1965, of Leslie Augustus Watts, deceased.*

(2) That the Claimant being the only child for the late Leslie Augustus Watts is the fit and proper person to apply for Letters of Administration with Will Annexed in her father's estate or in the alternative that the Administrator General of Jamaica be appointed to obtain the said Grant.

(3) That the Last Will and Testament dated the 24th day of June 1965 of Leslie Augustus Watts who died on the 15th day of August 2015, be handed over to the Claimant.

(4) That the Claimant be appointed Administrator Ad Litem in order to defend any claim being brought against the estate of the late Leslie Augustus Watts.

(5) Any other or further relief which the Court deems fit.

(6) That time for service be abridged.

(7) Costs.

[2] The Fixed Date Claim Form was supported by an Affidavit sworn to by the Claimant and filed on the 10th day of January, 2020. In that Affidavit, the Claimant stated that she is the only child of Leslie Augustus Watts and she exhibited a copy of her Birth Certificate. She further stated that the residuary beneficiary named in the Will of the late Leslie Augustus Watts (hereinafter referred to as Mr. Watts or the Testator), Ms. Marjorie Watts, had predeceased the testator and thus the residue has lapsed on intestacy. Ms. Marjorie Watts died in May of 2015 and a Death Certificate was exhibited. The Claimant further stated that she is entitled to the residuary estate of the deceased pursuant to section 4 of the **Intestates' Estate and Property Charges Act** (hereafter referred to as 'the **IEPCA**') as there is no surviving spouse of the deceased and she is the only issue. She also stated that pursuant to Civil Procedure Rule 68.11 (d), she would be entitled to a grant as the residue of her father's estate has not been wholly disposed of by his Will dated the 24th day of June, 1965.

[3] The Defendant swore to an Affidavit filed on the 23rd day of October, 2020 in response to the Claimant's Affidavit in Support of Fixed Date Claim Form. The Defendant denied that the Claimant is the daughter of Mr. Watts and stated that she intends to strenuously challenge the validity of the Claimant's Birth Certificate. The Defendant admitted that even though Ms. Marjorie Watts predeceased the

Testator, she stated that that the residuary estate cannot and should not fall to the Claimant as she is not the issue of the Testator. The Defendant further stated that the Claimant cannot be entitled to the residuary estate based on the laws of intestacy as there exists a valid Will of the deceased. The Defendant made reference to the case of **Leslie Augustus Watts (by Lloyd Barnett, his Next Friend and Guardian Ad Litem) v Lelieth Watts and Watts Investments Limited** [2013] JMCC Comm. 15 (hereinafter referred to as "the **Lloyd Barnett matter'**) and stated that based on that judgment, any document purported to be signed and executed after March 2010 by Mr. Watts is null and void and consequently of no effect. The Defendant stated that it is clear from the facts that the deceased did not have the mental capacity to agree to or sign to his name being added to the Claimant's Birth Certificate in 2011 and it is on that basis that the Birth Certificate produced by the Claimant should be held null and void.

[4] There Claimant swore to an Affidavit in Response to the Defendant's Affidavit. In this Affidavit which was filed on the 26th day of November, 2021, the Claimant stated that she strongly asserts that the form for the addition of her father's particulars to her Birth Certificate was signed independently by her father, Mr. Watts. The Claimant stated that she has always been regarded as the daughter of Mr. Watts by other members of the family prior to the litigious matter now involving the residuary estate. She went further to say that the relationship between her father and herself has never been denied even in previous judgments which were handed down by this Honourable Court. She further added that she has always been introduced to the friends of Mr. Watts as his daughter. The Claimant stated that her father had written letters to her and in closing, he always referred to himself by saying *"Your Dad."* The Claimant exhibited photos with her father and her children sharing what she referred to as *"family moments."* The Claimant also exhibited an invoice from a funeral home which was given in the Claimant's name to show that her actions have always reflected that she regarded Mr. Watts as her father. The Claimant stated that she authorized her Attorneys-at-Law to obtain a Medical Report from a Neurologist who her father had seen and same was

exhibited to the Affidavit. The Claimant reiterated that she is entitled to the residuary estate of Mr. Watts pursuant to section 4 of the **IEPCA** as there is no surviving spouse and she is the only issue of the deceased. The Claimant also stated that she would be entitled to a grant as the residue of the estate of her father has not been wholly disposed of by his Will.

THE EVIDENCE ON BEHALF OF THE CLAIMANT

[5] The Claimant was the first witness called and her Affidavit filed on the 10th of January, 2020 was allowed to stand as her evidence in chief. In cross examination of the Claimant, she did not agree with Learned Counsel for the Defendant that after March 2010 Mr. Watts did not have the mental capacity to sign any documents on his own behalf. Even though the Claimant accepted the findings of the Learned Judge in the **Lloyd Barnett matter** and accepted that the amendment to her Birth Certificate was done after that judgment. The Claimant admitted in cross examination that she recalled when her father fell ill or had a stroke and she also recalled the claim that was brought against her in 2016 regarding a purported fraudulent Will of Mr. Watts.

[6] The second witness on behalf of the Claimant was Ms. Marjorie Smith. Her Affidavit filed on the 1st day of April, 2022 was allowed to stand as her evidence in chief. In that Affidavit the witness stated that she was a tenant of the deceased for over 20 years and she knew he was majority shareholder for Watts Investment Limited. She further stated over the years of being Mr. Watts' tenant, he always indicated to her that he had one child whose name was Lelieth Watts and she spoke to the fact that Mr. Watts always acknowledged the Claimant as his daughter and treated her as such from what she could see. Ms. Smith also spoke of the resemblance she saw between Mr. Watts and the Claimant. Ms. Smith stated that Mr. Watts often boasted of his 2 grandsons, who are the Claimant's children, and that their photographs could always be vividly seen on a coffee table at the entrance to his apartment. In cross examination, it was put to her that there was no coffee table in Mr. Watts' apartment and she disagreed with that suggestion.

She went further to say that the table faces the door, *"and you see the 2 little boys on it. He told me one wanted to be a pilot and one wanted to be a doctor I think."* She also spoke of seeing Mr. Watts interacting with his grandchildren whenever they would come to visit. Ms. Smith further deposed that Ms. Marjorie Watts, the sister of Mr. Watts, also acknowledged the Claimant as her niece during the time she knew her. It was also mentioned that the Claimant assisted Mr. Watts when he became ill up to the time of his death.

[7] In cross examination Ms. Smith was asked of the relationship she had with the Claimant. Her response was that the Claimant was her landlord and so was the Defendant. Ms. Smith did not agree or disagree with the suggestion of Learned Counsel for the Defendant that Watts Investment Limited was her landlord. Her response was that she was instructed to pay the rent to the Defendant and another time it was to the Claimant and it was back and forth. She was questioned about a matter that was brought against her by Watts Investment Limited in the Parish Court for recovery of possession of the premises which she was renting from them. She admitted that she was aware of the claim and that the Defendant was the one who acted on behalf of Watts Investment Limited. She agreed that an Order was made for her to leave the premises and that the Affidavit in this matter was signed by her on the same date that the said Order was made. Ms. Smith said that she was not upset about the proceedings brought by the Defendant on behalf of Watts Investment Limited and she disagreed with that suggestion when it was put to her. In fact, she went further to say that her signing the Affidavit in this matter had nothing to do with her feelings.

[8] The third witness called on behalf of the Claimant was Mr. Gilbert Green. His Affidavit filed on the 5th day of April, 2022 was allowed to stand as his evidence in chief. Mr. Green is the stepfather of the Claimant and he deposed that he was married to the Claimant's mother. He stated that he knew Mr. Watts prior to his death and that during his lifetime he acknowledged the Claimant as his daughter, both privately and in public and treated her as such. He deposed that due to his relationship with the Claimant's mother, he was privy to the father and daughter

relationship between the Claimant and Mr. Watts and he saw when Mr. Watts would visit his daughter to check how she was doing and they would call and speak for extended periods of time. Mr. Green stated that Mr. Watts contributed financially to the educational and medical expenses of the Claimant during her upbringing and he ensured that his daughter was well clothed, fed and well taken care of. Mr. Green stated that he was actively involved in the Claimant's life and is very familiar with the great extent to which Mr. Watts took care of her and acknowledged her as his daughter. Mr. Green also deposed that the Claimant spent time with her aunt Ms. Marjorie Watts the United States of America and eventually Mr. Watts made arrangements for the Claimant to live in the United States of America. Mr. Green also deposed that the Claimant told him of Mr. Watts' excitement about and love for his 2 grandsons and that the Claimant also spoke of Mr. Watts' financial and emotional support for her and her children.

[9] In cross examination Mr. Green was asked about his relationship and marriage to the Claimant's mother. He stated that he had no relationship with the Claimant's mother prior to 1961 and he denied that there is a possibility that he might be the Claimant's father. Mr. Green stated that he assumed that the Claimant's mother was pregnant when he met her as she seemed a little weighty to him and it could have been early stages of pregnancy. He admitted that he never met Ms. Marjorie Watts and he knew of the situation because the Claimant's mother consulted him on the issue. In fact, he admitted that the Claimant's mother informed him about everything that took place and that is how he knew that Ms. Marjorie Watts was the Claimant's aunt. He also described his relationship with the Claimant as a normal family relationship. In re-examination of this witness, it was made clear that he knew that the Claimant's birthday was August 8, 1961 and that when the relationship started between himself and the Claimant's mother in spring of 1961, the Claimant's mother would have already been pregnant.

[10] Ms. Lilieth Deacon was the fourth and final witness called on behalf of the Claimant. Her Affidavit that was filed on the 1st day of April, 2022 was allowed to stand as her evidence in chief. She deposed that she had conduct of this matter

involving the Claimant for over 5 years and has known the Claimant for over 15 years. She further deposed that Mr. Watts acknowledged the Claimant as his daughter and she was able to speak to this through her interactions with Mr. Watts while they were colleagues at the then Jamaica Telephone Company Limited. Ms. Deacon stated that during her tenure at the Jamaica Telephone Company as Legal Officer, Mr. Watts referred to the Claimant as his daughter. She further stated that she had the privilege of corresponding with the sister of Mr. Watts, that is Ms. Marjorie Watts, and she acknowledged the Claimant as her niece. Ms. Deacon also spoke of another sister of Mr. Watts, with whom she had a close relationship with, and this sister would also speak of the Claimant as her niece. She mentioned previous court proceedings where the Claimant was never disregarded as the daughter of Mr. Watts and was referred to as such in the judgments. In cross examination she accepted that her law firm is on record in this matter and that the firm collected legal fees. She did not agree with Learned Counsel for the Defendant that there is a conflict of interest in her testifying in this matter that she has collected legal fees for.

THE EVIDENCE ON BEHALF OF THE DEFENDANT

[11] The only witness for the Defendant was the Defendant herself and her Affidavit that was filed on the 23rd day of October, 2020 was allowed to stand as her evidence in chief. She said in examination in chief that she met the Claimant in October of 2006. In cross examination the Defendant said that her sister introduced her to the Claimant. She went further to say that when they were introduced no relationship was mentioned and her sister just said this is Lelieth. The Defendant said that Mr. Watts never indicated that the Claimant was his daughter. It was suggested to her that Mr. Watts was the one who introduced the Claimant to her and in response she stated that that is not her recollection. Learned Counsel for the Claimant asked the Defendant if she sought to question the relationship with Mr. Watts and the Claimant in the claim she brought against the Claimant in 2016. The Defendant in response said that it was established by the family that she was not the daughter. She admitted in cross examination that she

cannot recall if that was ever challenged. Learned Counsel for the Claimant asked the Defendant if she agreed with the aspect of Mangatal's J judgment in the **Lloyd Barnett matter** where it was stated that the relationship between Leslie Watts and the present Claimant is one of parent and child. The Defendant did not agree and stated that that is what is written in the judgment. It was asked of her if she ever challenged it and she said no. The Defendant stated that many things were allowed to slide in the said judgment and the Court was never corrected regarding the relationship of the parties either by Mr. Watts or his next friend.

[12] Learned Counsel for Claimant asked the Defendant if she sought the support of any other family members in support of this claim and she said that the support was always there from the beginning. However, she went on to say that they were all willing to come forward and testify but with the circumstances that the Court attached that they were all to be present, they could not come. The Defendant disagreed with the suggestion that the reason why she did not get the support of her family members is because they admit that the Claimant is the daughter of Mr. Watts. In describing her relationship with the Claimant before the matter was brought in 2016, the Defendant said, *"She has not spoken to me. She has stopped taking my calls while my uncle was alive. Maybe it was at the funeral she said something to me."* She also described the relationship she had with the Claimant from 2006 to 2011 as one which she would speak to the Claimant and she thought that they had a friendly relationship. She further stated that the Claimant stopped taking her calls so she didn't call anymore. The Defendant agreed that she transported the Claimant to various locations when she requested but she did not agree that the Claimant was doing business for Mr. Watts. In fact, the Defendant said that she did not know of the Claimant doing any business for Mr. Watts. She admitted that she brought the Claimant to the Registrar General's Department and further added that she brought her to an insurance company, but that she had no idea what the Claimant was doing in there. It was suggested to the Defendant that she knew when Mr. Watts' name was being added to the Claimant's Birth Certificate. The Defendant said that she did not witness any signature or know for

a fact that her uncle had signed any papers. She also said that the Claimant had a pink form that was shown to her and that she knew that the Claimant had asked Mr. Watts to sign something and when he asked what is it, the Claimant said *"sign it, it is in your best interest."*

[13] Learned Counsel suggested to the witness that the only reason why the relationship between the Claimant and Mr. Watts is being questioned is because this claim was brought which would put the Claimant in a position as an Administrator of Mr. Watts' estate as opposed to herself. The Defendant stated that she didn't think so and further said that she doesn't think that's quite right. The Defendant maintained in cross examination that the issue of paternity was raised by Mr. Watts when he was alive and it is not because there is an asset that was not mentioned in the Will of which the Claimant is saying that she is entitled to. The Defendant also admitted in cross examination that the issue of paternity was never brought before the Court either by Mr. Watts or his next friend. It was also borne out in cross examination that the Defendant had no conclusive evidence that the Claimant is not the daughter of Mr. Watts.

SUBMISSIONS

[14] I wish to thank all Counsel involved in this matter for providing written submissions to the Court in deciding the issues raised in this claim, however, I do not find it necessary in the course of this judgment to repeat those submissions. I also wish to make it known that I carefully considered all the submissions and authorities before me whether they have been referred to or not.

ISSUES

[15] The main issues for my determination are:

(a) Whether any part of the claim is res judicata;

(b) Whether the Claimant is the only child for Leslie Augustus Watts;

(c) Whether the Claimant is the sole beneficiary of the residuary estate under the Will of Leslie Augustus Watts dated the 24th day of June, 1965 and is the fit and proper person to apply for Letters of Administration with Will Annexed in the estate of Leslie Augustus Watts; and

(d) Whether the Claimant ought to be appointed Administrator Ad Litem in the estate of Leslie Augustus Watts.

[16] In addition to the abovementioned issues, the question of the credibility of the parties is also an issue to be considered.

LAW & ANALYSIS

A. *Res Judicata*

[17] *Res judicata* is a Latin term meaning "a matter judged" or "a thing decided." It is a common law principle meant to prevent a cause of action between the same parties and regarding the same issues from being re-litigated once it has been judged on its merits. It preserves the binding nature of a court's decision. There are several cases which have dealt with the doctrine of *res judicata*. One such case is the **Gordon Stewart v Independent Radio Company Limited and Wilmot Perkins** [2012] JMCA Civ. 2, where it was said that *"the doctrine of res judicata is to protect courts from having to adjudicate more than once on issues arising from the same cause of action and to protect the public interest that there should be finality in litigation and that justice be done between the parties…"*

[18] McDonald-Bishop, J. in **Fletcher & Company Limited v Billy Craig Investments Limited and Scotia Investments Limited** analysed the doctrine of *res judicata* and stated at paragraph 27 that-

> *Usually res judicata is pleaded by way of estoppels and so the trend has been to treat res judicata as arising on the plea of three forms of estoppels: the two traditional ones being **"cause of action estoppels"** and **"issue estoppels"** and the third being an extension of the doctrine of estoppel as enunciated by Vice-Chancellor Sir James Wigram in **Henderson v Henderson** (1843) 3 Hare 100.*

[19] Learned Counsel for the Claimant submitted that the said matter before the court is not *res judicata* as the issue surrounding whether the Claimant is the daughter of the deceased was never a live issue in previous matters before the Court. Similarly, the issue surrounding the issue of the appointment of the Claimant as an Administrator of the estate of Mr. Watts was never brought before the Court and therefore it cannot be said to be *res judicata.* On the other hand, Learned Counsel for the Defendant submitted that parts of the Claimant's claim are *res judicata* as affirmed in **Sydnia Matheson v Lelieth Watts** [2018] JMSC Civ. 144 (hereinafter referred to as 'the **2018 matter'**). Learned Counsel for the Defendant further submitted that the Court found that the issues herein were *res judicata* based on Mangatal's J decision in the **Lloyd Barnett matter**. Learned Counsel for the Defendant contended that the matter before the Court rests on the Claimant's position that she is the daughter of the deceased. This is substantiated by an amended Birth Certificate. Learned Counsel contended that the amended Birth Certificate cannot be relied on in light of the fact that the amendment was made after the Court declared that the deceased would have lost his mental capacity to make rational and important decisions. The Court found that the deceased did not have the mental capacity after March 2010 to make certain decisions relation to his affairs and therefore, Learned Counsel for the Defendant contended that the document cannot stand nor be used as evidence in any matter.

[20] What I understand the Defendant's position to be is that the Claimant cannot rely on any document being purported to be signed by Mr. Watts after March of 2010 in light of Mangatal's J decision in the **Lloyd Barnett matter**. I agree with Learned Counsel for the Defendant. The Birth Certificate of the Claimant that was amended to include the father's particulars in February of 2011 cannot be relied on as it was held that Mr. Watts did not at the material time have the mental capacity to evaluate and make rational important decisions relating to his affairs after suffering a stroke in March of 2010. In fact, Mangatal J declared a Power of Attorney that was signed in January of 2011 as being null and void and of no legal effect in light of her prior

findings that Mr. Watts did not have the mental capacity to do such a thing. Therefore, without more, I cannot rely on that document.

[21] The Claimant had exhibited to her Affidavit filed on the 26th day of November, 2021 a Medico-Legal Report prepared by Dr. John A.S. Hall which stated that Mr. Watts remained unequivocally mentally clear and alert after he suffered a stroke in 2010 and that he examined Mr. Watts repeatedly between 2010 and 2015 and he noted that Mr. Watts still remained mentally clear and alert. The report further stated that 2013 was the first time that his examinations recorded that Mr. Watts was, *"…a little garrulous, irrelevant and repetitive in conversation: indicative of the onset of Vascular Dementia, an anticipated development after brain damage (i.e. stroke/brain attack) in some survivors."* However, that does not coincide with the findings made in the **Lloyd Barnett matter**. In fact, in that judgment his report noted that Mr. Watts had mild cognitive insufficiency in 2010. Dr. Hall was not a witness in this matter and no submissions were made regarding this report. Therefore, no questions were put to him regarding the contradictory nature of the reports. I will not rely on it and it has in no way influenced my decision in this judgment.

[22] In the **2018 matter**, which surrounded the degree of understanding of Mr. Watts to execute a Will and a power of attorney in 2010, Pusey J found that the matter was *res judicata* as Mangatal J in the **Lloyd Barnett matter** had found that Mr. Watts did not have the mental competence to manage his affairs after suffering a stroke in March of 2010.

[23] McDonald-Bishop, J. (as she then was) in **Fletcher & Company Limited v Billy Craig Investments Limited and Scotia Investments Limited** [2012] JMSC CIVIL 128 accepted from the Halsbury's Laws of England, 4th edition, Vol. 16, paragraph 1530, that for issue estoppel to arise to sustain a plea of *res judicata*, it must be shown that the party to be estopped is seeking to re-litigate a precise point which had *'once been distinctly put in issue in an earlier proceeding and which has been solemnly and with certainty determined against him'.* It must be shown that the

matter on which the decision was alleged to have been made in the earlier action was one that had come directly (not collaterally or incidentally) in issue in the first action and embodied in a judicial decision that is final. The principle applies whether the point involved in the earlier decision is one of fact or law or a mixed question of fact and law. I am of the view that issue estoppel applies in this matter as the same question regarding the mental capacity of the deceased has been decided in the earlier proceedings. In addition to that the judicial decision was final and even though the parties to the judicial decision were not all the same, this estoppel is still applicable as the Claimant was party to the proceedings surrounding the 2013 judgment and ought to have been aware of the findings that were made. McDonald-Bishop J further noted at paragraph 50 that, "*issue estoppel should apply in situations where the parties are different provided the person against whom the estoppel is being sought to be invoked in the subsequent proceedings was a party to the earlier proceedings in which the point in issue was determined against him. It would follow from this line of thinking that the fact that in this case the second defendant was not a party in the earlier proceedings should not, of itself, preclude the invocation of the doctrine."*

[24] Therefore, it is my judgment that the issue of the Birth Certificate which is alleged as being signed by Mr. Watts is *res judicata* in light of the findings of Mangatal J in the **Lloyd Barnett matter**. I will not allow the parties to re-litigate the mental competence of Mr. Watts. Therefore, I will not rely on the Birth Certificate of the Claimant in this judgment.

B. *Declaration of Paternity*

[25] Section 10 of the **Status of Children Act** (hereinafter referred to as 'the **SCA**') gives the Court the power to make declaration of paternity. It states that:

> *(1) Any person who –*
>
> *(a) being a woman, alleges that any named person is the father of her child; or*

> *(b) alleges that the relationship of father and child exists between himself and any other person; or*
>
> *(c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,*
>
> *may apply in such other manner as may be prescribed by rules of court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or O the child or both of them are living or dead.*
>
> *(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the Court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (b) of subsection (1) of section 7, whether any of the requirements of that paragraph have been satisfied.*
>
> *(3) An application under subsection (1)(a) may be made by a woman who is with child, before the birth of the child.*
>
> *(4) An application may be made under subsection (1) to-*
>
> *(a) the Resident Magistrate's Court for the parish in which any of the parties reside or, as the case may be, the Family Court; or*
>
> *(b) the Supreme Court.*

[26] A declaration of paternity is very important as consequences may flow from it, for example in respect of succession to property, which seems to me to be the basis of the Claimant's claim. Section 7 (1) (b) of the **SCA** provides for recognition of paternity required in cases of succession, etc. Section 7 states that:

> *(1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust, be recognized only if—*
>
> *(a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or*
>
> *(b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by section 8 or otherwise):*

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child is born, the occurrence of any act, event, or conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.'

[27] It is clear from the **SCA** and it has been established in case law that there are different categories of paternity declaration and both require a different standard of proof. The declaration contemplated by section 7 (1) (b) of the **SCA** attracts a higher standard which ought to be in accordance with section 8 of the **SCA.** On the other hand, under section 10, the declaration contemplated is a declaration simpliciter and it is just a simple declaration of paternity.

[28] I am of the view that in light of the **Lloyd Barnett matter** and the **2018 matter**, this is not an issue that ought to be before the Court. In those 2 judgments, the Claimant was referred to as the daughter of Mr. Watts. In fact, in the **2018 matter**, which concerned both parties, Pusey J referred to the Claimant in the case at bar as the only child of Mr. Watts. The Defendant in cross examination stated that she was aware of both judgments, even though she did not agree with the parts of the judgment that referred to the Claimant as the child of Mr. Watts. However, not only were her concerns not raised, she did not include this issue surrounding paternity in the **2018 matter** which is a claim that she brought. In fact, the Defendant herself admitted that she had no conclusive evidence to support her assertion that the Claimant is not the daughter of Mr. Watts. In my view, the issue surrounding the relationship between the Claimant and Mr. Watts has already been decided.

[29] If I am wrong on that, I am also of the view that based on the **Henderson v Henderson** principle, it should not be open to the Defendant now to raise the said issue as she already had an opportunity to do so. Therefore, the Defendant ought to be prevented from raising this issue now. The principle was applied by the Privy

Council **in Yat Tung Investment Co Ltd v Dao Heng Bank Ltd.** [1975] AC 581,591 where it was said,

> *"But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgement of Wigram V.C. in Henderson v Henderson..."*

[30] However, even if the issue was not *res judicata*. I would still be of the view there is a plethora of evidence that supports the fact that Mr. Watts had in his lifetime acknowledged the Claimant as his child. I accept the evidence of the Claimant that the relationship between her and Mr. Watts has never been denied. In fact, it is clear from the Orders being sought in the Fixed Date Claim Form that paternity was not originally an issue in this matter as the Claimant was merely seeking a Declaration of Paternity in light of section 7 (1) (b) of the **SCA.** The Claimant is seeking Orders regarding the estate of Mr. Watts and it is the Defendant who has asserted that because the Claimant is not the daughter of Mr. Watts, she is therefore not entitled to the Orders being sought. It seems to me that the only reason why this issue is being raised now is that the Claimant is seeking the Orders regarding the estate of Mr. Watts.

[31] On a balance of probabilities, I accept as true, the evidence of the Claimant that the relationship between her father and herself has never been denied. The Claimant made mention of letters, however, with none of those letters being exhibited I am weary to accept them as true. I accept the photographs that were exhibited showing family moments to the Affidavit of the Claimant filed on the 26th day of November, 2021. These photographs were not disputed by the Defendant nor did she challenge the authenticity of the photographs. In fact, even though the burden of proof rests with the Claimant, I find it interesting that the Defendant said nothing regarding these photographs. I also find it curious that having been introduced to the Claimant, she did not say what, if any, efforts were made to understand how they were related. All the Defendant has said was that it was understood by the family that the Claimant was not the daughter of Mr. Watts. If it

were so understood by the family that the Claimant is not Mr. Watts' daughter, it begs the question as to what kind of a relationship did the Claimant and the Defendant in fact share in light of the evidence elicited that they would call each other and the Defendant would even provide transportation to the Claimant when requested? I also wonder if it were so understood by the family that the Claimant was not the daughter of Mr. Watts why was this fact never corrected in the **Lloyd Barnett matter**?

[32] I find no issue with the fact that Ms. Smith admitted that she and the Claimant did not share a relationship outside of that of landlord and tenant. In fact, it is of no moment, in my view, whether this witness and the Claimant shared a close relationship. I accept that Ms. Smith, Mr. Watts and his sister went on walks and that the Claimant would join when she came to visit. That in my view, does not contradict Ms. Smith's position in relation to the type of relationship she shared with the Claimant. Ms. Smith was able to speak to the fact that Mr. Watts had pictures of his grandchildren in his apartment which she saw which I also accept as true. I find Ms. Smith to be a truthful and honest witness who was not shaken under cross examination.

[33] I find it highly improbable that the Defendant was introduced to the Claimant by her own sister and accepted that the Claimant was simply Lelieth as she said in cross examination. I find the Defendant to be less than forthcoming in her evidence. I do not accept nor do I believe the explanation given by the Defendant as to why the family members who agree that the Claimant is not the daughter of Mr. Watts were not present at Court. The Defendant stated that the reason was due to the circumstances that the Court attached that they were all to be present. The witness was not questioned further regarding what exactly that meant. However, she further added that they wanted to be present but could not come. There was no mention of who these family members were, or where they were located and, I also find it interesting that no Affidavit was ever filed by them.

[34] I also do not believe her version of events regarding the situation where she drove the Claimant to the Registrar General's Department. The Defendant admitted that she did in fact transport the Claimant to the Registrar General's Department, however she denied knowing why the Claimant went there and then admitted that she saw the pink form but did know for a fact that Mr. Watts had signed it. If the Defendant was aware of all of this why did she not take action earlier? Why was it only after this claim was brought that she decided to raise the issue of paternity? I agree with Learned Counsel for the Claimant that this has now caused questions to be raised as it relates to the credibility of the Defendant. Having observed the Defendant, I do not accept her as a truthful and honest witness. The witness brought no evidence or witnesses to support her assertion that the Claimant is not the daughter of the deceased.

[35] Learned Counsel for the Defendant put to Mr. Green in cross examination that the Claimant could be his child. However, under re-examination of that witness I am of the view that the issue was cleared up. I accept as true the evidence of Mr. Green that even though he met the mother of the Claimant in 1960, they did not have a relationship until 1961 and that by the time they had started their relationship the mother of the Claimant was already pregnant. Having observed this witness, I found him to be truthful when he said that it did not matter to him that the Claimant's mother was pregnant when they started a relationship. The witness' timeline proves this. They started dating in Spring of 1961 and the Claimant was born in August of that same year. The witness accepted that Spring would be from March to May. I am mindful of the fact that some of the evidence from Mr. Green is not corroborated as he did state that some of the information he received about the relationship between the Claimant and Mr. Watts was from the Claimant. However, I did not rely solely on those aspects of his evidence. I accept that he was in fact married to the Claimant's mother and was therefore privy to the relationship the Claimant and Mr. Watts shared and could speak to it.

[36] Even though Ms. Deacon had conduct of this matter previously, I cannot agree with Learned Counsel for the Defendant that there is a conflict of interest since Ms.

Deacon's firm still represents the Claimant. I also find Ms. Deacon to be a truthful and honest witness, who was not shaken under cross examination. I accept that she had known Mr. Watts for over 15 years and that they used to work together. I also accept that she was acquainted with 2 sisters of Mr. Watts who both acknowledged that the Claimant was their niece. It is not unheard of for an Attorney-at-Law to be a witness in a matter that their own firm represents. Learned Counsel for the Defendant did not convince me that there was a conflict of interest which could cause me to disregard the evidence of Ms. Deacon.

[37] I also considered that there are 2 judgments out there which included relatives and friends of Mr. Watts, which both referred to the Claimant as his daughter. None of those judgments have been challenged regarding that aspect to date. I simply cannot ignore this fact.

[38] Learned Counsel for the Claimant submitted that in relation to the DNA Test, the mere fact that the results did not show a conclusive 0% shows that there is still some probability that there is some relationship between the parties thus indicating that the Claimant is in fact the daughter of the deceased. On the other hand, Learned Counsel for the Defendant submitted that no evidence has been provided by CARIGEN Caribbean Genetics DNA Test on the probability that the Claimant and the Defendant are first cousins. Mr. Compton Beecher, Chief DNA Analyst at CARIGEN Caribbean Genetics found that the probability of the Claimant and the Defendant being cousins is 24.86%. Learned Counsel for the Claimant contended that this statistic is quite sufficient in properly establishing a familial connection between the parties. It was further contended that the report revealed that percentage calculations assign a prior probability of 50% to the hypothesis of the stated relationship. Learned Counsel for the Defendant further contended that it is unlikely that the Claimant is the daughter of the deceased.

[39] Respectfully, I must disagree with Learned Counsel for the Defendant. The DNA Parentage Test Report states that the probability of the parties being cousins is 24.86%. The Report goes on to note that percentage calculations assign a prior

probability of 50% of the hypothesis of the stated relationship. The DNA Parentage Test Report does not exclude the parties as being related. In fact, the report shoes that there is some familial connection between the parties. Dr. Compton Beecher who prepared the said report was not called at trial. With that being said, it is for me to determine what weight I wish to give to this said report. The mere fact that the percentage of the probability of them being cousins is relatively high is proof that the parties do share some familial connection. In fact, I think it is important to note that they are the children of persons who are brother and sister and that may very well account for the difference in the markers present in the parties' chromosome. Therefore, while I do not place great weight on this report, I am of the view that it can be considered in support of the other evidence that exists in this matter.

[40] I share a similar view to that of Batts J where he relied on the judgment of Rawlins JA in **Sampson v McKenzie** Civil Appeal of 2005 judgment delivered on 5th of December, 2005 in the case of **In the Matter of the Estate of Charles Leopold Leiba** [2013] JMSC CIV 94 that where the putative father is deceased, the Court must be very wary to make declarations under section 7 (1) (b). Evidence must therefore be such as to satisfy the Court on a high balance of probabilities. I am satisfied that the evidence before me is on a high balance of probabilities. The evidence before me is overwhelming and it all supports a finding that Mr. Watts in his lifetime acknowledged the Claimant as his daughter.

C. *The estate of Leslie Augustus Watts*

[41] Section 20 of the **Wills Act** states that:

> *Unless a contrary intention shall appear by the will, such real estate, or interest therein, as shall be compromised, or intended to be compromised, in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.*

[42] Learned Counsel for the Claimant submitted that there is partial intestacy under the deceased's Will and the Claimant is of right entitled to apply for Letters of Administration in the estate of the deceased as the residuary beneficiary Marjorie Watts predeceased the Testator. On the other hand, Learned Counsel for the Defendant submitted that this DNA Test rebuts the Claimant's prima facie evidence that Mr. Watts is the Claimant's father. Based on that, Learned Counsel for the Defendant asserted that the residuary estate cannot and should not fall to the Claimant based on the forgoing.

[43] The Claimant's position as I understand it is that the death of Ms. Marjorie Watts in the lifetime of Mr. Watts resulted in a partial intestacy and that therefore entitles the Claimant to apply for Letters of Administration in the estate of Mr. Watts. However, I cannot agree with that position as there is no evidence before me that supports it. Having examined the Last Will and Testament of Mr. Watts as exhibited in the Affidavit of the Claimant filed on the 10th day of January, 2020 I do not see where Ms. Marjorie Watts is a residuary beneficiary. In fact, there are several names listed in the said Will as beneficiaries of the residue, none of which is Ms. Marjorie Watts. I have compared the full name of Marjorie Catalina Watts as it is listed on the exhibited Death Certificate and I do not see where that name appears in the list of names under the residuary beneficiary in the Last Will and Testament of Mr. Watts. In fact, Ms. Marjorie Watts was devised a gift under the said Will and in light of the section 20 of the **Wills Act**, that gift shall be included in the residuary estate as it would have lapsed in light of the fact that she predeceased the Testator. There is no evidence before me that one or all of the residuary beneficiaries predeceased Mr. Watts. In light of that, to grant the Order that the Claimant is the sole beneficiary of the residuary estate would contradict section 20 of the **Wills Act** as there is a residuary clause in the estate. It is not clear on the Claimant's case why she is saying that she is entitled to the residuary of Mr. Watts' estate when there is already a residuary clause in his Will.

[44] The Order regarding the Claimant being declared as the fit and proper person to apply for Letters of Administration with Will Annexed suffers a similar fate. There

is simply no evidence before the Court of the status of the named executors in Mr. Watts' Last Will and Testament. There is no evidence supporting whether they are alive or dead or even if they predeceased Mr. Watts or not. Rules 68.8 and 68.11 of the Civil Procedure Rules (hereinafter referred to as 'the **CPR'**) govern the application and order of priority to apply for a grant where the deceased left a Will. Rule 68.11 of the **CPR** lists as first in priority to apply for the grant where the deceased left a Will is the executor. However, as mentioned above, there is no evidence before me on which I can act. The Claimant is not challenging the validity of Mr. Watts' Will. Therefore, I can only be guided by what is placed before me. It is also not clear whether or not probate was granted or even applied for in Mr. Watts' estate. There is nothing which supports a finding that the Claimant is the fit and proper person to apply for Letters of Administration with Will Annexed or the alternative Order being sought. I also do not see a need to make an Order for a declaration that the Claimant is entitled to apply for Letters of Administration with Will Annexed as the **CPR** already gives the class of persons who can apply in this instance and in making such an application one would have to account for the persons who are higher in the order of priority to them.

[45] It was not clear who is currently in possession of the Last Will and Testament of Mr. Watts. Nevertheless, I decline to make a finding that the said Will ought to be handed over to the Claimant. In light of my earlier findings, I do not see where the Claimant is currently entitled to any part of Mr. Watts' estate.

[46] Administrator *Ad Litem* is an interim grant where someone is appointed to represent a deceased's estate in legal proceedings. I wish to rely on the words of Anderson J in **Ray Electra Jobson-Walsh and Gilbert Jobson v Administrator General of Jamaica, Baron Stephens and Others** [2013] JMSC Civ 132 at paragraph 22. Anderson J states that:

> *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.

[47] There is no evidence before me of a claim that is required to be brought either by Mr. Watts' estate or against Mr. Watts' estate. In fact, there is nothing before the Court to show the reasons necessitating such a grant. This type of grant is an interim grant and therefore I am unable to make a general Order that the Claimant ought to be appointed as such. I have to make the assumption that Mr. Watts' estate has executors, in light of the fact that there is no evidence of their status before me, and if that is so then there is no basis for me to appoint the Claimant as Administrator *Ad Litem.*

COSTS

[48] Section 47 of the **Judicature (Supreme Court) Act**, states *"In the absence of express provisions to the contrary, the costs of and incident to every proceeding in the Supreme Court shall be in the discretion of the Court".* The exercise of this discretion should be pursued in a judicial manner. The aim in relation to costs is to make an order that reflects on the overall justice of the case.

[49] The general rule relating to costs is contained in Rule 64.6(1) of the **CPR** and it states that: *"If the Court decides to make an order about the cost of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party".* Rule 64.6 (2) goes on to say that the Court may order a successful party to pay all or part of the costs of an unsuccessful party.

[50] In doing so the court must have regard to all the circumstances which include:

(a) the conduct of the parties both before and during the proceedings;

(b) whether a party has succeeded on particular issues, even if that party has not been successful on the whole of the proceedings;

(c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 or 36;

(d) whether it was reasonable for a party:

i. to pursue a particular allegation and/or

ii. raise a particular issue

(e) the manner in which a party has pursued:

i. that party's case;

ii. a particular allegation or

iii. a particular issue.

[51] The Claimant has not been successful in her entire claim. In fact, the issue surrounding the relationship between the parties was raised by the Defendant. I took into account the fact that the Claimant placed before the Court a Birth Certificate which was signed in a time when the Court deemed Mr. Watts as not having the relevant mental capacity to do so. I also took into account whether it was reasonable for the Claimant to pursue the Orders relating to the estate of Mr. Watts. The Claimant did not place sufficient evidence before this Court to support the Orders that she is seeking. I also considered the fact that given the rules surrounding succession laws, even though I had no trouble finding that the Claimant is the daughter of Mr. Watts, I do not see how such a declaration would assist her. It may very well be that the persons in the Will predeceased Mr. Watts and his residuary estate would therefore be governed by intestacy laws which could result in the Claimant being the sole beneficiary. However, no such evidence is before the Court and I will not embark on an exercise in futility and sheer speculation. It is therefore my judgment that costs ought to be apportioned as between the parties. This would, in my view, reflect the overall justice of this case.

THE MARCH 22, 2024 ORDERS

[52] On the 22nd day of March, 2024 I made the following Orders:

(1) The Claimant, Lelieth Watts, is the daughter of Leslie Augustus Watts, deceased. Paternity having been admitted by her father, Leslie Augustus Watts, during his lifetime. This declaration is made for the purposes of section 7 (1) (b) of the Status of Children Act.

(2) Order number 2 sought in the Fixed Date Claim filed on the 10th day of January, 2020 is granted in part only with respect to the Claimant, Lelieth Watts, being declared the child of Leslie Augustus Watts, deceased.

(3) Orders 1, 3 and 4 sought in the Fixed Date Claim Form filed on the 10th day of January, 2020 are refused.

(4) Half costs to the Claimant to be taxed if not agreed.

(5) Defendant's Attorneys-at-Law to prepare, file and serve Orders made herein.

[53] I made those Orders on the basis that the Claimant had not shown how she would have been entitled to the residuary estate of Mr. Watts. However, at the time of making those findings I had not had sight of the document in its entirety, being the Last Will and Testament of Mr. Watts. The copy attached the Bundle filed by Learned Counsel for the Claimant was devoid of paragraphs (d) and (e) of the residuary clause. Unfortunately, neither Counsel spoke specifically to the relevant paragraphs in their full submissions.

[54] The Claimant's position as I understand it is that the death of Ms. Marjorie Watts in the lifetime of Mr. Watts resulted in a partial intestacy and that therefore entitles the Claimant to apply for Letters of Administration in the estate of Mr. Watts. Having now had sight of the complete document being the Last Will and Testament of Mr. Watts dated the 24th day of June, 1965, upon reflection, I now agree with the Claimant's position. The Will of Mr. Watts states at paragraph (e) that, "*The rest and residue: to my sister Marjorie in trust for the maintenance of my parents during their lives and after their death to my said sister absolutely."* The general principle is that once a beneficiary predeceases a testator the gift that they would have been entitled to lapses. The undisputed evidence before the Court is that Ms. Marjorie Watts predeceased Mr. Watts and as such, whatever portion of the residue that was gifted to her falls to intestacy. Not only was Ms. Marjorie Watts gifted the rest of Mr. Watts' residue, she was devised a gift under the said Will and in light of the section 20 of the **Wills Act**, that gift shall be included in the residuary estate as it would have lapsed since she predeceased the Testator. Intestacy laws will

therefore govern the portion of Mr. Watts' estate that lapsed in his Last Will and Testament.

[55] Section 2 of the **IEPCA** defines an intestate to include, *"a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate."* Section 8 of the **IEPCA** provides that in cases where there is partial intestacy, the personal representative becomes a statutory trustee of the indisposed estate. The indisposed estate, being the assets that were not specifically devised or bequeathed fall on intestacy and must follow the statutory distribution provided for in section 4 of the **IEPCA.** Section 4 of the **IEPCA** governs succession to real and personal estate on intestacy. The order of priority as to the class of persons to benefit is outlined in the Table of Distribution under section 4 of the **IEPCA.** The class of persons in order of priority is as follows:

(a) the surviving spouse;

(b) the issue/children;

(c) parents;

(d) other eligible relatives; and

(e) *bona vacantia.*

[56] There is no dispute as to whether or not Mr. Watts was survived by a spouse. I therefore see no need to embark on such a discussion. The Claimant being the child of Mr. Watts, as so declared by this Court, would therefore be next in the order of priority to benefit from the partial intestacy of Mr. Watts' estate. What is clear from section 4, item 2 of the **IEPCA** is that if the intestate leaves no surviving spouse, then the issue/child of the said intestate is entitled to the whole of the residuary estate. What this means is that, the Claimant being the only child of Mr. Watts, is entitled to the whole of the residuary estate that falls to intestacy. However, I am still of the view that the Claimant has not shown that she is the fit and proper person to apply for the Letters of Administration for the portion of Mr.

Watts' estate that falls on partial intestacy. Rule 68.11 of the **CPR** lists the order of priority for persons entitled to a grant where the deceased left a Will and the Claimant would have to account for the persons who are higher in priority to her before such an Order can be granted. The Claimant still has the option to apply for the grant in her father's estate and in that application can account for any person higher in priority to her. Since the Claimant is now entitled to a portion of Mr. Watts' estate I have no difficulty granting an Order that the said Last Will and Testament ought to be handed over to the Claimant.

[57] This change to my Orders would now necessitate an adjustment to the costs Order. The Claimant has been successful in this claim, she is now granted the majority of the Orders sought in her Fixed Date Claim Form filed on the 10th day of January, 2020. I took into account the fact that the Claimant placed before the Court a Birth Certificate which was signed in a time when the Court deemed Mr. Watts as not having the relevant mental capacity to do so. However, I also took into account whether it was reasonable for the Claimant to pursue the Orders relating to the estate of Mr. Watts and in my view she was. The Claimant placed sufficient evidence before this Court to support the Orders that she is seeking. I see no need to depart from the general rule relating to costs that the unsuccessful party, who in this case is the Defendant, is to pay the costs of the successful party, who in this case is the Claimant.

COURT'S POWER TO VARY OR REVOKE ORDERS MADE

[58] D. Fraser J in **Saed Habib Mattar v James Salmon** [2020] JMSC Civ 48 considered the circumstances where a previous order that was made by the Court may be varied or revoked. That case surrounded the issue of an oral agreement for the sale of land where the claimant claimed that the defendant was put into possession of the premises, with a monthly rental, until the said agreement for sale was formalised and completed. Orders were made that there was a valid and enforceable agreement between the parties, that there be specific performance of the said agreement for sale and that the defendant is required to pay the sums

owed on the purchase price within a specific time period in order to complete the sale. D. Fraser, J consequently made adjusted Orders having stated that he had not considered that an oral rental agreement had been made out between the parties regarding monthly rental and that sufficient consideration had not been given to the documentary support for the existence of such an oral agreement. The Learned Judge also stated that even if he was wrong on that aspect, then the defendant must be liable to compensate the claimant, with interest, for the use and occupation of the premises while the purchase agreement remained uncompleted. D. Fraser, J also noted on reflection that the sums in the earlier Orders made by him should have been stated in United States Dollars. As a result, D. Fraser J was of the view that this change in outcome would necessitate an adjustment to the Order made on costs. The Learned Judge was of the view that the previous Orders would not have done justice between the parties and made adjusted Orders.

[59] In **Saed Habib Mattar v James Salmon** *(supra)* D. Fraser J dealt with the law surrounding the circumstances in which a Court may vary or revoke its own order. He stated that:

> *[74] In* ***Petrojam Limited v Sea Ventures Shipping Limited, Worldwide Green Tankers, The owners and/or persons interested in the M/T Great News and Everol Bailey*** *[2013] JMCC Comm. 16, Mangatal J examined the circumstances in which a court may vary or revoke its own order.*
>
> *[75] The learned judge noted at paragraph 17 that:*
>
> > *Rule 42.8 of the Civil Procedure Rules ("CPR") states:*
> >
> > > *"A judgment or order takes effect from the day it is given or made unless the Court specifies that it is to take effect on a different date."*
> >
> > *Notwithstanding this, Rule 26. 1(7) provides that:*
> >
> > > *"A Power of the Court under these rules to make an order includes a power to vary or revoke that order."*
> >
> > *Whilst a judgment or order of the Court is to have immediate effect, unless otherwise stated by the Court, the Civil Procedure Rules have given the Court express power to vary or revoke such orders*

or judgment. The rule is not specific as to when or the circumstances in which the power can be invoked. As the rule does not have a temporal element to it, it would seem that a Court could revisit its order or judgment, with a view to revoking or varying it, between the time it was handed down and the date which it was sealed or otherwise perfected. This contrasts with the Court's general power to correct a clerical mistake or accidental slip or omission at any time (Rule 42.10 CPR).

[76] Mangatal J reviewed the English Court of Appeal decision of ***Stewart v Engel*** *[2000] 1 WLR 2268 (CA) and the decision of the Supreme Court of England in* ***In Re L and another (Children) Preliminary Finding: Power to Reverse)*** *[2013] 1 WLR 634. Then after noting that there should be a careful balance between the court seeking to ensure that there was no miscarriage of justice and the fact that the power should not be lightly exercised…*

[77] ***In Re L and another (Children) Preliminary Finding: Power to Reverse)*** *Baroness Hale also considered whether before the judge made a change in her order she should have permitted the parties to make submissions on that point. On that point at paragraph 30 Baroness Hale stated that:*

> *[T]he discretion must be exercised "judicially and not capriciously". This may entail offering the parties the opportunity of addressing the judge on whether she should or should not change her decision. The longer the interval between the two decisions the more likely it is that it would not be fair to do otherwise. In this particular case, however, there had been the usual mass of documentary material, the long drawn-out process of hearing the oral evidence, and very full written submissions after the evidence was completed. It is difficult to see what any further submissions could have done, other than to re-iterate what had already been said.*

[78] It is clear from the authorities that the discretion to revoke or vary an order should not be lightly made. It is also clear that the overriding objective requires the court to seek to deal with cases justly. I considered whether it was desirable for counsel for the parties to make submissions on the issue but largely for the reasons that was not seen to be necessary in the case of ***In Re L and another (Children) Preliminary Finding: Power to Reverse),*** *I did not consider it necessary either in this case.*

[60] Mangatal J in **Petrojam Limited v Sea Ventures Shipping Limited, Worldwide Green Tankers, The owners and/or persons interested in the M/T Great News and Everol Bailey** [2013] JMCC Comm. 16 stated at paragraph 23 that:

> *In considering whether the overriding objective favours a variation or revocation of the original order, the following are some considerations which may be helpful in the analysis. As stated by Baroness Hale, "Every case is going to depend upon its particular circumstances."*
>
> 1. *The Court could consider whether there are any compelling reasons justifying the Court revisiting its orders or judgment. In the Engel decision, the decision of Neuberger J **In re Blenheim Leisure (Restaurants) L td (no.3) The Times, 9th November 1999** was cited as setting out justifiable instances of cases where the jurisdiction might justifiably be invoked. These include:*
>
>   i. *Plain mistake on the part of the court*
>
>   ii. *Failure of the parties to draw the Court's attention to a fact or point of law that was plainly relevant*
>
>   iii. *Discovery of new facts subsequent to the judgment being given*
>
>   iv. *If the applicant could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and that he did not have a fair opportunity to consider.*
>
> 2. *In the **Stewart v Engel** case, it was also suggested that where the Court is being asked to revisit its order or judgment in order to allow an amendment to a statement of case, the Court should consider the timing of the application.*
>
> 3. *Both Clarke L.J. and Baroness Hale in their respective judgments indicated that the Court should also consider whether any party had acted upon the decision to their detriment in deciding whether to grant or refuse the application.*
>
> 4. ***In Re L and another**, Baroness Hale also pointed out that justice might require the revisiting of a decision, for no more reason than the judge having a carefully considered change of mind.*

[61] A judge's discretion to vary or revoke an order is to be sparingly exercised. There must be exceptional circumstances or strong reasons for doing so. One of the

justifiable instances where the discretion can be invoked included a plain mistake on the part of the Court. Having had sight of the complete copy of the Last Will and Testament of Mr. Watts, I agree with the submissions of Learned Counsel that the Claimant is entitled to that portion of the residuary estate which falls to partial intestacy.

[62] In **Stewart v Engel and Another** [2000] 1 WLR 2268 (C.A.) it was held that a judge was entitled to reopen a judgment or order in the period between delivery and the moment when the Order was sealed or otherwise perfected. The previous Orders delivered in this matter have not been sealed or otherwise perfected. In light of the compelling reasons outlined earlier, I am of the view that the previous Orders would not have done justice between the parties and therefore the Orders ought to be adjusted.

[63] I must thank Learned Counsel for the Claimant who brought this issue to the Court's attention. No submissions were made regarding this aspect, however I am of the view that it was not necessary in this case. I do not see what further submissions could have been done, as the parties had already made full written submissions after the evidence was completed.

ORDERS AND DISPOSITION

[64] Having regard to the forgoing, I now make the following adjusted Orders:

(1) The Claimant, Lelieth Watts, is the daughter of Leslie Augustus Watts, deceased. Paternity having been admitted by her father, Leslie Augustus Watts, during his lifetime. This declaration is made for the purposes of section 7 (1) (b) of the Status of Children Act.

(2) Order number 2 sought in the Fixed Date Claim Form filed on the 10th day of January, 2020 is granted in part, only with respect to the Claimant, Lelieth Watts, being declared the child of Leslie Augustus Watts, deceased.

(3) It is hereby declared that the Claimant is the sole beneficiary of the residuary estate of Leslie Augustus Watts, deceased.

(4) That the Last Will and Testament dated the 24th day of June 1965 of Leslie Augustus Watts, who died on the 15th day of August 2015, be handed over to the Claimant, Lelieth Watts.

(5) Order 4 sought in the Fixed Date Claim Form filed on the 10th day of January, 2020 is refused.

(6) Costs to the Claimant to be taxed if not agreed.

(7) Leave to Appeal is granted.

(8) Claimant's Attorneys-at-Law to prepare, file and serve Orders made herein.