



[2023] JMSC Civ.251

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

**CIVIL DIVISION**

**CLAIM NO. 2018HCV02416**

**IN THE ESTATE** of Joel Gibson otherwise known as JOEL AUGUSTUS GIBSON otherwise known as JOE GIBBS late of 4 Blythwood Drive, Kingston 6 in the parish of Saint Andrew, deceased, testate.

AND

**IN THE MATTER** of an Application for the opinion, advice or direction of the Court under *Section 39* of the **Administrator-General's Act**.

**Re: Joel Augustus Gibson otherwise known as JOE GIBBS**

**TRIAL IN CHAMBERS**

Ms. Melissa White for the Applicant, Mrs. Ayisha Robb-Cunningham instructed by Robb Cunningham and Company for Kharalee Gibson, Mr. Mark Jennings instructed by Mark Jennings & Co-Partners for Carl Gibson, Mrs. Tamara Riley-Dunn and Miss Kadian Davidson instructed by Nelson Brown Guy & Francis for Mayda Gibson and Graham Gibson.

Heard: November 16, 2023, December 15, 2023 and December 19, 2023

**Will - Construction – Testamentary Intention – Court to Interpret and Give Opinion, Advice, Directions and Make Orders Regarding Unclear Clauses of a Will - Section 39 of the Administrator-General's Act.**

**TRACEY-ANN JOHNSON, J (AG.)**

## THE CLAIM

[1] On the 26<sup>th</sup> June 2018, the Administrator-General for Jamaica (Administrator for the estate of Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs who died on the 21<sup>st</sup> day of February 2008, testate) filed a Fixed Date Claim Form in this Honourable Court, in which the advice, opinion and directions of the Court is sought in relation to the management and administration of the estate of Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs, particularly as it relates to the following terms of the Last Will and Testament of Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs:

- “1. *“I give and bequeath my dwelling house at 4 Blythwood Drive to my children to be shared equally with Miss Pasha Ricketts the mother of my youngest child Dontea Gibson”.*
2. *“My business property at 20 North Parade should rent until my son Dontea attains the age of twenty-one also Liguanea at 145 Old should be rented to pay the school fees and upbringing of my infant children”.*
3. *“I give and bequeath my property at 36 Union Square should be sold and the proceeds divided as follows, fifty percent to Pasha Ricketts, and the remaining fifty percent for her son Dontea”.*
4. *“All the remaining property must be sold the proceeds divided equally between Steven Gibson, Joelou Gibson, Racquel Gibson, Graham Alexander Gibson, Carl Gibson, Shannon Gibson, Kharalee Gibson, Kayan Gibson, Joel Gibson Jr., Mayda Guerra, Pansy Gibson”.*

[2] The Applicant also requested the following:

- “1. *Any such further or other direction as deemed fit by this Honourable Court.*
2. *Costs of this application to be borne by the Estate of Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs.”*

[3] The grounds on which the Applicant seeks directions are as follows:

- “a) *Pursuant to Section 39 of the Administrator-General’s Act, the Administrator-General may at any time apply to the Supreme Court for the opinion, advise or direction of the Court or Judge respecting*

*his rights or duties with regard to the management and administration of any Estate.*

- b) *That JOEL GIBSON otherwise called JOEL AUGUSTUS GIBSON otherwise called JOE GIBBS late of 4 Blythwood Drive, Kingston 6 in the parish of Saint Andrew died testate on the 21<sup>st</sup> day of February 2008 having made and duly executed his Last Will and Testament on the 19<sup>th</sup> day of February 2008 but failed to name an Executor.*
- c) *That a Grant of Administration with Will Annexed in his estate was granted to the Administrator-General for Jamaica on the 17<sup>th</sup> day of May 2012. The estate consists of both minor and adult beneficiaries and the speedy administration of the said estate is needed to assist the minor beneficiaries with their maintenance and general welfare and the adults with their daily life.*
- d) *That there are terms of the will which are not clear and/or cannot be performed and/or carried out and their continued existence without the courts intervention will result in the estate being in abeyance and the beneficiaries unable to inherit from the estate.*
- e) *That on reading the devise in the Last Will and Testament with regards to property located at 20 North Parade in the parish of Kingston registered at Volume 145 Folio 46 the testator's wishes are not readily ascertainable with respect to the fee simple interest; particularly, what must be done with the property on Dante Gibson attaining the age of 21 years.*
- f) *That on reading the devise in the Last Will and Testament with regards to property located at 145 Old Hope Road, Kingston 6 registered at Volume 249 Folio 46 the purpose of the gift could not be carried out and the wishes are not readily ascertainable with respect to the fee simple interest in the said property.*
- g) *Those beneficiaries to which properties are to be transferred are not in agreement and some of those said beneficiaries reside overseas and would prefer a sale of said properties instead of a vesting. That despite repeated request for written instructions to sell and/or consent to sell, same has not been forthcoming.*
- h) *The properties directed to be sold pursuant to the testator's instructions have failed to attract offers to purchase same despite repeated advertisement in varied mediums, and the continued adherence to such instructions will result in the protracted administration of the estate."*

## **THE AFFIDAVIT EVIDENCE**

*The Affidavit of Nathifa Grandison in Support of Fixed Date Claim Form*

- [4] The Applicant relied on the Affidavit of Nathifa Grandison filed on June 26, 2018. In that Affidavit, Miss Grandison stated that the deceased was survived by eleven (11) children namely Carl Gibson, Joel Gibson, Stephen Gibson, Graham Gibson, Gavin Gibson, Wenworth Gibson, Dante Gibson, Mayda Gibson, Kharalee Gibson and Clayton Gibson. Dante Gibson who was born on October 26, 2006 and Wentworth Gibson on June 15, 2000 were the minor children of the estate at the time the claim was filed. Fourteen (14) legatees including the deceased children were named in the Last Will and Testament. Two (2) of the devise in the will are silent on the testator's wishes regarding the fee simple interest. The will contains a residuary clause which states that, *"I give the remain of estate to my children equally"*.
- [5] She indicated that devise two (2) in the said will states that, *"My business property at 20 North Parade should rent until my son Donteia attains the age of twenty-one."* She stated that it is not clear from this devise or the remainder of the will, how the fee simple interest in this property is to be treated upon Dante attaining the age of twenty-one (21). Dante becomes twenty-one (21) years old on October 26, 2027. This property is currently rented to Carl Gibson for a monthly rental of One Hundred and Fifteen Thousand, Five Hundred Dollars (\$115,500). She argued that as the said gift is not clear regarding what ought to be done with the fee simple interest upon Dante attaining the age of twenty-one (21) years, it fails due to uncertainty and falls to the residue.
- [6] She further indicated that devise three (3) in the said will states that, *"...Liguanea at 145 Old should be rented to pay the school fees and upbringing of my infant children."* She also stated that the it is not clear from this devise or the remainder of the will how the fee simple interest in this property is to be treated upon the two (2) minor children attaining the age of majority. In the administration of the estate, the property at 145 Old Hope Road was not in a condition to be rented as the building was an unfinished concrete structure which would have required considerable construction work, building plan and parking facilities to make it habitable and suitable to be rented. The structure was also in breach of certain

building regulations and was ordered demolished by the court, upon an application made by the Kingston & St. Andrew Corporation. The property was thereafter sold by the Administrator-General and the net proceeds of the sale are held in the testator's estate. The direction that the said property is to be rented to pay the school fees and upbringing of the testator's infant children could not be carried out. The said gift could not be performed and/or carried out, and it therefore fails and falls to the residue.

- [7] With regards to the property at 4 Blythwood Drive, Kingston 6, the deceased stated in the said will that, *"I give and bequeath my dwelling house at 4 Blythwood Drive to my children to be shared equally with Miss Pasha Ricketts the mother of my youngest child Dontea Gibson."* The Applicant sought the Court's direction as the beneficiaries to whom the property is to be transferred share a less than cordial relationship and are not in agreement. Additionally, some of the said beneficiaries reside overseas and would prefer a sale of the property instead of a vesting. Despite repeated requests to the said beneficiaries for their written instructions to sell and/or consent to the sale, this has not been forthcoming. This property is occupied by one of the beneficiaries, and the others are not desirous of living at the said address. Without the Court's intervention, the estate will be in abeyance and the beneficiaries unable to inherit from this gift.
- [8] In relation to the properties at 36 Union Square, Kingston 5 in the parish of St. Andrew registered at Volume 933 Folio 422 of the Register Book of Titles, 25 Evans Avenue, St. John's Heights in the parish of Saint Catherine registered at Volume 1087 Folio 937 of the Register Book of Titles and Bellwood Cottage in the parish of Saint Catherine registered at Volume 1283 Folio 943 of the Register Book of Titles, she stated that the Last Will and Testament instructs that these properties are to be sold. The properties have been advertised for sale but no offers for purchase were received. She stated further that continued adherence to such instructions will result in the protracted administration of the estate. The Applicant sought the Court's intervention as otherwise the estate will be in abeyance and the beneficiaries unable to inherit from the gift.

*The Affidavit of Peta-Gay Munroe in Support of Fixed Date Claim Form and the affidavit of Mayda Gibson in Response to the Fixed Date Claim Form*

- [9] The Applicant also relied on the Affidavit of Peta-Gay Munroe filed on May 4, 2023, which is summarised at paragraphs 12 to 16 below. The Court considered the Affidavit of Mayda Gibson in Response to Fixed Date Claim Form filed on June 26, 2018 where she indicated her position in relation to the properties which form part of her deceased father's estate.

**SUBMISSIONS**

- [10] The Court considered the written and oral submissions made by counsel in this case, as well as the authorities relied on by them. I have also had regard to the arguments made by the beneficiaries who were allowed to address the Court in relation to this matter. The Court will make reference to these submissions and matters raised as they are relevant for these purposes.

**MATTERS ON WHICH DIRECTIONS, OPINION AND ADVICE SOUGHT**

- [11] In this matter, the Court was asked to determine the issue of the interpretation of the Last Will and Testament of the deceased, Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs regarding property at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew and property at 20 North Parade in the parish of Kingston registered at Volume 145 Folio 56 of the Register Book of Titles.
- [12] In the Affidavit of Peta-Gay Munroe in Support of Fixed Date Claim Form filed on May 4, 2023, she indicated that on January 23, 2023, an Order was made by the Honourable Mrs. Justice S. Wolfe-Reece that the beneficiaries were to meet with the Administrator-General's Department to raise their concerns, discuss and seek to arrive at some consensus in relation to all outstanding matters in the estate. This Order was to be complied with on or before March 10, 2023. As a result, some of

the beneficiaries (along with their counsel) and representatives met on March 9, 2023. Further to the said meeting, the Court was asked to make a Consent Order regarding the property located at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew in the following terms:

*“By consent, the proceeds of sale regarding the property located at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew is to be distributed equally among Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson and Danté Gibson.”*

**[13]** In relation to the property at 20 North Parade in the parish of Kingston registered at Volume 145 Folio 56 of the Register Book of Titles that the Court gives its opinion, advice and direction regarding the interpretation of the section of the will which refers to this property as it relates to the following issues:

- 1) The distribution of the property located at 20 North Parade in the parish of Kingston, that is who the property is to be transferred to after Dante attains 21 years old?
- 2) The distribution of the rental proceeds for the property at 20 North Parade in the parish of Kingston?
- 3) Whether the services of an external valuator should be retained to assess the current market rental value of the property located at 20 North Parade in the parish of Kingston or should the internal valuation prepared by the Administrator-General's Department be used as the guide to increase the current market rental value of the property?
- 4) How should the Administrator-General for Jamaica proceed in relation to the desire of Carl Gibson, Graham Gibson and Mayda Gibson to purchase the following properties:
  - a) Property at 25 Evan's Avenue, St. John's Heights in the parish of St. Catherine.
  - b) Property at Bellwood Cottage, Simon in the parish of St. Catherine.

c) Property at 4 Blythwood Drive, Beverly Hills, Kingston 6 in the parish of St. Andrew.

d) Property at 20 North Parade in the parish of Kingston.

**[14]** Miss Munroe also pointed out that at the said meeting, it was revealed that Ms. Kayan Gibson, a beneficiary identified in the Last Will and Testament of the deceased was inadvertently omitted from the Application that was heard by the Honourable Mrs. Justice S. Wolfe-Reece on January 23, 2023. At paragraph 19 of the said Affidavit she stated as follows;

*“That I am advised by my Attorneys-at-Law and verily believe that in accordance with the Last Will and Testament of the deceased, Ms. Kayan Gibson has an interest in the properties referred to in paragraph 1 and 2 of the Orders granted by the Honourable Mrs. Justice S. Wolfe-Reece on the 23<sup>rd</sup> of January, 2023 in Claim No SU 2018 HCV 02416. Further, Ms. Kayan Gibson has an interest in other properties in the estate of the deceased. For clarification purposes, Ms. Kayan Gibson has an interest in the following:*

- a. Property at 25 Evan’s Avenue, St. John’s Heights in the parish of St. Catherine*
- b. Property at Bellwood Cottage, Simon in the parish of St. Catherine*
- c. Property at 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew*
- d. Property at 20 North Parade in the parish of Kingston (if any to be determined)”*

**[15]** On her account as stated in the said Affidavit, attempts were made to contact her but to no avail. Additionally, that the Administrator-General’s Department is not in receipt of any correspondence from Ms. Kayan Gibson advising that she will be disclaiming her interest in the estate. None of the beneficiaries have provided any contact information for Ms. Kayan Gibson. A whereabouts advertisement was published in the Daily Observer on April 26, 2023 upon request of the Administrator-General’s Department. To date, the Department is still unable to contact Ms. Kayan Gibson. She further stated that the Administrator-General’s



Department is unable to transfer the properties at paragraphs 1 and 2 of the Order granted by the Honourable Mrs. Justice S. Wolfe-Reece on the 23<sup>rd</sup> day of January, 2023 or the Intellectual Property (Copyright) in light of Ms. Kayan Gibson's interest. The Administrator-General for Jamaica is also unable to effect the transfers without Ms. Gibson's details including but not limited to her address, occupation and Taxpayer Registration Number (TRN).

- [16] In the said Affidavit, she stated that the Administrator-General for Jamaica and the beneficiaries in the estate are seeking the Court's assistance regarding how to proceed with Ms. Kayan Gibson's interest and in particular, they ask the Court to consider making an Order regarding how to deal with Ms. Kayan Gibson's beneficial entitlement in the deceased's estate.

## LAW

- [17] By virtue of *section 39* of the **Administrator-General's Act**:

*"The Administrator General may at any time apply to the Supreme Court for the opinion, advice or direction of the Court or a Judge respecting his rights or duties with regard to applying for, or obtaining administration of any estate, or trust, or probate of any will, or assuming the management of any estate, or trust, or with regard to any estate or trust vested in or administered by him under this Act, or with regard to any matters arising out of the management or conduct of any such estate or trust."*

- [18] In **Modern Law of Real Property**, tenth edition, Cheshire and Burns define a will as, *"a declaration made by a testator, in the form required by law, of what he desires to be done after his death."* Section 19 of the **Wills Act** provides as follows:

*"Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will."*

- [19] In relation to the construction of a will, the object is to ascertain the testator's expressed intention, that is, the intention which the will itself affirms, either expressly or by implication. The Court is concerned with determining what the testator meant by the words used in the will. In **Abbott v. Middleton** (185) 52 ER

813, it was held that, *"In construing a will words may be supplied, changed and transposed, wherever the context requires."* It may be difficult to define the circumstances when this may be required and such power is to be exercised very cautiously so as not to insert in the will a different meaning from that which the testator intended. It may be necessary to examine the rest of the will to see what the general scope and object of it is and this may throw a light on the particular clause that the court is seeking to interpret. If the words of a will are clear, effect will be given to them even if it is not what the testator intended: see also **Scale v. Rawlins** [1892] AC 342.

[20] In the case of **Perrin v Morgan** [1943] AC 399 at page 420 of the judgment, Lord Romer stated as follows:

*"...I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the Court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said..."*

[21] At page 406 of the case, Viscount Simon L.C. stated that:

*"...The fundamental rule in construing the language of a will is to put on the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made his will, but what the written words he uses means in the particular case – what are the "expressed Intentions" of the testator."*

[22] It was also stated in **Re Bailey** [1951] Ch. 407 as follow:

*"It is not the function of a court of construction to improve upon or perfect testamentary dispositions. The function of the court is to give effect to the dispositions actually made as appearing expressly or by implication from the language of the will applied to the surrounding circumstances of the case."*

[23] In **Charles v Barzey** [2002] UKPC 68, at paragraph [6], Lord Hoffman stated as follows: -

*“The interpretation of a will is in principle no different from that of any other communication. The question is what a reasonable person, possessed of all the background knowledge which the testatrix might reasonably have been expected to have, would have understood the testatrix to have meant by the words she used...”*

[24] In the case of **Re Hodgson, Nowell v Flannery** [1936] Ch. 203 Farwell J stated at page 206 as follows:

*“...The duty of the Court in the first place is to read the will itself. The Court is bound in the first instance to read it, giving the words used their primary and proper meaning. The Court is then entitled to look at the surrounding circumstances. If the surrounding circumstances are such that the words of the will, if construed in accordance with their primary meaning, are not apt to apply to any of the circumstances, then the Court is entitled, having regard to the surrounding circumstances, to see whether the language used is capable of some other meaning than its ordinary meaning, not for the purpose of giving effect to what the Court may think was the intention of the testator, but for the purpose of giving effect to what the intention of the testator is shown to be from the language used having regard to the surrounding circumstances. In other words, the Court is not entitled to disregard the language which the testator has used in order to give effect to what the Court may think to have been the intention, but the Court is entitled to say that the words which the testator has used were not intended to have their primary meaning if the surrounding circumstances are such as to lead inevitably to that conclusion.”*

[25] For a gift under a will to be valid, both the subject matter and object of the gift must be stated with sufficient certainty to enable the Court to enforce it. In the absence of these elements, the gift will fail for uncertainty and the asset will fall to the residue if there is a residuary clause contained in the will. If there is no residuary clause, the asset will be administered in accordance with the laws of intestacy: See **Roy Buchanan and Ors v Jean Hall** [2016] JMSC Civ. 57. In **Asten v Asten** [1984] 3 Ch. 260, a testator in his Last Will and Testament devised his four (4) properties to his four (4) sons. The houses were not numbered in the will and as such the Court could not ascertain which of the properties he intended to devise to each son. There was no residuary clause in the will. Romer J stated at page 268 that:

*“If a will shows that a testator intends to give a particular property to a legatee, and, owing to the testator having several properties answering the description in the will of the particular property given you are unable to say, either from the will itself or from extrinsic evidence, which of the several properties the testator referred to, then on principle the gift must fail for uncertainty, and the Court cannot, in order to avoid an intestacy, change the will, or construe it as giving to the legatee the option of choosing any of the properties.”*

**[26]** In the case of **Ann Marie Llewellyn Young and Anor v. Louise Llewellyn and Ors** [2019] JMSC Civ. 129 K. Anderson, J stated that:

*“From the case law, it is clear that the court ought to be reluctant to render a gift devised in a will, void for uncertainty. In the circumstances underlying this claim, uncertainty pertains to who is to benefit from the disputed property, based on how the relevant provision in the deceased’s will is written. To avoid this uncertainty, this court will have to examine the will itself in order to construe the testator’s intention.”*

## **DISCUSSION AND ANALYSIS**

**[27]** This Court considered carefully the authorities cited above and the submissions made in this matter. The Court in seeking to put itself in the testator’s armchair, bears in mind that the object is not to rewrite his will but to interpret what he intended. On a thorough examination of the will, it is clear that in most instances where the deceased specifically intended to devise an asset to a particular individual, he did so by specifically naming the individual or individuals. In some instances, assets were specifically devised to named children and in other instances to all his children in equal shares. It is evident from the will when read as a whole that the clear intention of the testator was to ensure that his minor children’s education and development were taken care of after his demise, as well as to have all his children (both his minor and adult children) benefit from his estate. In circumstances where he wanted to bestow special gifts on specific children, the mother of what appears to be his last child and other individuals whom it appears he had some connection with such as his driver, he did so in each case.

*The Property at 20 North Parade in the parish of Kingston*

**[28]** Paragraph 5 of the Last Will and Testament of Joel Gibson reads:

*“My business property located at 20 North Parade should rent until my son Dantea attains the age of twenty-one also Liguanea at 145 Old Hope Road should be rented to pay the school fees and upbringing of my infant children.”*

**[29]** Counsel for the Applicant, Miss White, submitted that the will states that this property is to be rented until Danté is twenty-one (21) years old. It was submitted that an argument could be made that the deceased intended for the rent to be used to maintain Danté, as he was specifically referred to in the devise. However, a contrasting argument could be made that the rent was to be used to maintain all the deceased’s minor children at the time of his death. Counsel for the Applicant submitted that there is uncertainty regarding same as the testator did not expressly state how the rent from 20 North parade, Kingston was to be used.

**[30]** Counsel on behalf of Miss Mayda Gibson, Mrs. Riley-Dunn submitted that in keeping with the literal rule, all rent proceeds from the property located at 20 North Parade should be distributed to Danté until he reaches the age of twenty-one (21) years old. They concluded based on the following observations:

- a) The testator states that with respect to 20 North Parade that property must be rented;
- b) Then the stated intention of the rent proceeds is to maintain and educate his children;
- c) Further, the testator explicitly stated that the maintenance and education are for his minor children;
- d) Danté is the only minor child of the deceased at this time.

**[31]** Counsel Mrs. Ayisha Robb-Cunningham on behalf of Miss Kharalee Gibson submitted that the intention of the testator is that he wished to look after his minor

children until they attained the age of majority and for 20 North Parade to be rented until Danté reached twenty-one (21) years old. She further submitted that in light of the absence of a direction on how to treat with the rental proceeds from 20 North Parade, same would fall on the residue of the will.

[32] Counsel Mr. Mark Jennings on behalf of Mr. Carl Gibson submitted that the will is silent as to whom should receive the benefit of the rental proceeds of 20 North Parade, and, as to its disposition after Danté attains the age of twenty-one (21). He argued that it is not the Court's function to "create" a testamentary disposition of 20 North Parade in favour of Danté and/or his mother by a posthumous reading of the testator's mind. He further argued that in considering the will as a whole, the Court is bound to consider that the specific provisions otherwise made in the will for Danté and his mother means that, had he intended them to be the sole beneficiaries of 20 North Parade, he would in all likelihood have likewise done so specifically. He submitted that there is *prima facie* no uncertainty or ambiguity, but rather a failure to make a specific bequest of the (interest in the) particular property, which consequently must fall on the residuary estate. If, however, it is found that the provision regarding 20 North Parade is uncertain or ambiguous, then it is submitted that the gift fails for uncertainty on that ground, and that the property should fall to the residuary estate.

[33] Having considered the will as a whole, it is clearly stated that the testator's business property located at 20 North Parade in the parish of Kingston should be rented and for what period. The testator's stated intention was for the said property to be rented until Danté attains the age of twenty-one (21) years old. The Court agrees with counsel, Mr. Jennings, that the specific provisions otherwise made in the will for Danté and his mother means that, had he intended them to be the sole beneficiaries of 20 North Parade, he would similarly have done so specifically. I considered the entire paragraph and took particular note that the testator's stated intention was for both properties at 20 North Parade and 145 Old Hope Road to be rented. Immediately following his stipulation in relation to both properties he stated, *"to pay the school fees and upbringing of my infant children"*. By this

formulation, his stated intention is that the rent proceeds from both properties is to be used to educate and maintain his infant children. The Court is also of the view that this can be inferred from the fact that both properties are dealt with in the same paragraph, the stated purpose is for rent which was to be utilised in the same way, that is for the education and maintenance of his infant children. It is the Court's further view that the testator's use of the words 'infant children' in this case, means all his children that were below twenty-one (21) years old at the time of his death. This is consistent with a general reading of that paragraph of the will which indicates that the testator's intention was to ensure that each child benefits or is educated and maintained until he or she attains twenty-one (21) years old. This can be further gleaned from the fact that Danté who was the youngest child up to the point of the testator's death was used as the marker to indicate up to what point the property should continue to be rented. Consequently, based on the will, once a child attains twenty-one (21) years old, he or she would no longer be entitled to benefit from the rental proceeds from the property located at 20 North Parade in the parish of Kingston. Therefore, based on the intention of the testator as gleaned from the will, the children that should benefit are all the children who were below twenty-one (21) years old at the time of the testator's death.

- [34]** From the Court's examination and assessment of this paragraph, there is prima facie no uncertainty or ambiguity as to the purpose for which the property should be utilised and what should be done in relation to the proceeds. The testator's intention was not for Danté alone to benefit, and, therefore, although he is the only remaining minor child, at this time, all rent proceeds from the property located at 20 North Parade, Kingston could not equitably be distributed to Danté alone until he attains the age of twenty-one (21) years old. Based on the will, this property should continue to be rented until Danté attains twenty-one (21) years old and the rental proceeds are to be used to educate and maintain all the deceased's children that were below twenty-one (21) years old at the time of his death, that is, Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and Graham Gibson, until each child attains twenty-one (21) years old.

[35] The circumstances of this case necessitates that the Administrator-General for Jamaica does a yearly account of all funds received from the rental of the property since the death of the deceased and apportion such funds equally among all child the children that were below twenty-one (21) years old at the date of death of the testator (that is, Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and Graham Gibson) taking into account the number of years from the date of death of the testator until each child attains twenty-one (21) years old.

[36] On a further examination of paragraph 5 of the will, it is evident that the testator failed to make a specific bequest of the (interest in the) particular property. There is no stipulation in the will as to what should happen to the property after Danté attains twenty-one years old. It has been contended that in such circumstances, the property must fall on the residuary estate. To make a determination as to what should happen to this property or the interest in the said property after Danté Gibson attains twenty-one (21) years old, the Court considered both paragraphs 8 and 13 of the will of the deceased.

[37] Paragraph 8 of the will reads as follows:

*“All remaining property must be sold the proceeds divided equally between Steven Gibson, Joelou Gibson, Racquel Gibson, Graham Alexander Gibson, Carl Gibson, Shannon Gibson, Kharalee Gibson, Joel Gibson Jr, Mayda Guerra and Pansy Gibson.”*

[38] Paragraph 13 of the will reads as follows:

*“I give the remain of estate to my children equally”.*

[39] In relation to the paragraphs preceding paragraph 8 of the will, the testator deals with the property at 4 Blythwood Drive, the properties at 20 North Parade and 145 Old Hope Road, the property at 24 Retirement Crescent in the parish of St. Andrew, the property at 36 Union Square and then the will reads, *“All remaining property...”* When paragraph 8 is considered within this context as well as the testator’s use of the words, *“all remaining property”*, it is clear that his intention at



paragraph 8 was to deal with properties that he did not specifically mention in the preceding paragraphs. 20 North Parade was one of the properties that was specifically mentioned at paragraph 5 of the will and, therefore, the property at 20 North Parade cannot be dealt with in accordance with paragraph 8 of the will.

[40] On the other hand, paragraph 13 is the residuary clause under the will. It is the broad catch-all clause which operates to deal with the portion of the deceased's estate that remains after paying off the estate's debts, taxes and expenses and after distributing any specific gifts of property or other assets. The property located at 20 North Parade in the parish of Kingston would be captured under the residuary clause and would have to be dealt with in accordance with paragraph 13 of the will.

[41] Since the property falls on the residuary estate, the property is to be transferred to all the children of the deceased in equal shares after Danté Gibson attains twenty-one (21) years old. Therefore, Upon Danté Gibson attaining twenty-one (21) years old, the property at 20 North Parade in the parish of Kingston is to be transferred to Carl Gibson, Joel Gibson Jr, Stephen Gibson, Graham Gibson, Gavin Gibson, Wentworth Gibson, Danté Gibson, Mayda Gibson, Shannon Gibson, Kharalee Gibson and Kayan Gibson as tenants-in-common.

[42] The Court had regard to the provisions of the **Rent Restriction Act** to determine its applicability to the property at 20 North Parade in the parish of Kingston. *Section 3 (1)* of the Act provides that:

*"3-(1) This Act shall apply, subject to the provisions of section 8 to all land which is building land at the commencement of this Act or becomes building land thereafter, and to all dwelling-houses and public or commercial buildings whether in existence or let at the commencement of this Act or erected or let thereafter and whether let furnished or unfurnished..."*

[43] *Section 3(1) (a) to (e)* stipulates the premises which are exempted under the provisions of the Act. *Section 8* of the Act also empowers the Minister by order to declare any class of premises specified in such order to be exempted premises.

- [44] The Court was not able to rely on or utilise the rental/lease agreement as part of the evidence in this case as the document embodying the lease agreement should have been stamped in accordance with the requirements of the **Stamp Duty Act**. Brooks J (as he then was) in the case of **Zavia Mayne v. Radhika Sankar Rothery and Nandcare Pharmacy Limited** [2017] JMCA Civ. 8 stated at paragraph 12 of the judgment as follows:

*“There was also raised, in argument before us, the question of whether the document embodying the lease agreement should have been stamped in accordance with the requirements of the Stamp Duty Act. It appears, based on the authority of section 36 of the Stamp Duty Act, and the interpretation given to it by this court in its decision in **Garth Dyche v Juliet Richards and Another** [2014] JMCA Civ 23, that the document ought to have been stamped before it was admitted into evidence. The fact that a judge of the Supreme Court, in **Marjorie Brown-Young v Laddy Vernon Anderson** (1984) 21 JLR 348, admitted a document into evidence without requiring it to be stamped, cannot bind future tribunals faced with the issue of the admissibility of an unstamped document.”*

- [45] At paragraph 5 of the will, the testator described the property as “my business property located at 20 North Parade”. Counsel for the Applicant has also stated that the property is subject to the provisions of the **Rent Restriction Act**. Therefore, prima facie, the property can be considered as one to which section 3 (1) of the **Rent Restriction Act** applies, the property being what the Court will refer to as a ‘commercial rental property’. Therefore, the Court considered sections 17 and 21 of the said Act. In the case of **Zavia Mayne v. Radhika Sankar Rothery and Nandcare Pharmacy Limited** [2016] JMCA Civ. 77, Tie, J (Ag.) (as she then was) at paragraph 14 of her judgment summarised these provisions as follows:

*“Section 17 of the Act deals with the standard rent pending determination by an assessment officer and provides that until such determination, the standard rent is the rent at which the premises were let ‘plus any increases sanctioned pursuant to this Act.’ Section 21 addresses the issue of the manner in which increases in rent may be allowed or restricted. That section allows for the landlord to make an application for an increase in rent where he has incurred expenses in effecting improvements to the premises, or where there has been an increase in certain rates and taxes subsequent to the assessment by the assessing officer as regards the standard rent. It further deals with increases as a result of orders made by the Minister and essentially provides that the Minister may sanction an increase of rent by such percentage as he may specify.”*

[46] The Court is, therefore, of the view that since the property located at 20 North Parade in the parish of Kingston is governed by the provisions of the **Rent Restriction Act**, an application should be made to an assessment officer of the Rent Assessment Board to determine the standard rent. Until such determination is made, the standard rent is the rent at which the property is currently let plus any increases sanctioned by the **Rent Restriction Act**.

[47] In relation to an annual increase in rental, *section 3(1) of the Rent Restriction (Percentage of Assessed Value) Order 1983*, states as follows:

*“The standard rent as determined for any premises pursuant to the schedule shall be increased on each anniversary of the application date by such amount as shall be necessary to increase, by 7 1/2 per cent, the standard rent payable immediately prior to such increase.”*

[48] This Order is made under *section 19* of the Act which deals with the determination of standard rent by the assessment officer.

[49] Based on the authority of **Jamaica Cottage & Motels Association Limited v Carl Campbell** (SCCA No. 53 of 2003), an annual increase of 7 ½ % has been endorsed as acceptable. However, as suggested by Morrison JA (as he then was) in the decision of **Annie Lopez v Dawkins Brown and Anor** (Ruling on costs) [2015] JMCA Civ. 25 at paragraph [6] of the judgment, there is no automatic right to impose an annual 7 ½ % increase. Justice Morrison pointed out that:

*“...Where the standard rent of any premises subject to the provisions of the Rent Restriction Act has been assessed pursuant to section 19(1) of the Act, the rent of any such premises may be increased by such percentage of the standard rent as may be sanctioned by ministerial order (section 21(2)(a)). Section 3(1) of the Rent Restriction (Percentage of Assessed Value) order 1983 provides for the annual increase in the standard rent of 7 ½ % in the circumstances stated in the Act and the order. In this case, there is absolutely no evidential basis to support the annual increase in rent under these provisions that is contended for by the appellant.”*

[50] The Court will point out at this stage, that the Administrator-General for Jamaica cannot seek to increase the rent or collect rent retroactively. Neither can the beneficiaries seek to do so as the property is subject to a lease agreement between

the Administrator-General for Jamaica and Mr. Carl Gibson. Therefore, any increase in the rental sum should be made either in accordance with the lease agreement (if this is provided for under the lease), subject to any notices to the tenant as may be relevant, or in accordance with the provisions of the **Rent Restriction Act** and the **Rent Restriction (Percentage of Assessed Value) Order 1983**.

*The Property located at 145 Old Hope Road, Kingston 6, in the parish of St. Andrew*

- [51] In relation to the property located at 145 Old Hope Road, Kingston 6, in the parish of St. Andrew, it was submitted by counsel for the Applicant that the intention of the testator was for the rent gained from the property to be used for supporting his infant children. However, the property was not in a position to be rented as the building was an unfinished concrete structure which would have required considerable construction work to be done, building plans and parking facilities to make it habitable and suitable to be rented. The structure was also in breach of certain building regulations and upon an application by the Kingston and St. Andrew Corporation, the court ordered that the property be demolished. Thereafter, the property was sold by the Administrator-General for Jamaica and the net proceeds are being held in the deceased's estate.
- [52] She submitted that it is not clear from paragraph 5 of the will how the fee simple interest in the property is to be treated upon the two (2) minor children attaining the age of majority. She noted that the rent obtained from the property was the gift devised in the will. However, in light of the state of the property and the court Order, the property could not be rented. As the terms of the will regarding the gift could not be carried out, she submitted that the gift therefore fails. Accordingly, she submitted that the proceeds of sale should be distributed as stated in paragraph 8 of the will of the deceased.
- [53] The Court has already discussed what the will provides in relation to the property at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew. As previously stated,

the intention of the testator was for the property to be rented and the rent proceeds used for the education and maintenance of the testator's children who were below twenty-one (21) years old at the time of his death. Therefore, it is these children that are relevant as it relates to this property. These children are namely, Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and Graham Gibson.

**[54]** It is clear that the circumstances which prevailed in relation to the property made it impossible to give the gift under the will which was the rent. However, the testator's intention was for the children below the age of twenty-one (21) years old to obtain the benefit from that property. The Court notes that he did not state what should happen after they all attain the age of twenty-one years. However, the Court's position in this regard is that such a consideration is rendered nugatory by virtue of the sale of the property which was necessitated by the condition of the property and the court Order.

**[55]** In the present circumstances, I cannot agree with counsel for the Applicant that the property should be treated with in accordance with paragraph 8 of the will which states, *"All remaining property must be sold the proceeds divided equally between Steven Gibson, Joelou Gibson, Racquel Gibson, Graham Alexander Gibson, Carl Gibson, Shannon Gibson, Kharalee Gibson, Kayan Gibson, Joel Gibson JR., Mayda Guerra and Pansy Gibson"*. This paragraph addresses property that was not specifically mentioned by the testator as he said, *"All remaining property..."* Although the testator did not say how the fee simple interest in the property is to be treated once these children attain the age of twenty-one (21) years, his clear intention was for them to benefit from the rental proceeds. The property having been sold by force of circumstances, it is consistent with the testator's intention that the children who were below twenty-one (21) years old at the date of his death should obtain the benefit of the proceeds of the sale of the said property. The Court will accordingly Order that the proceeds of sale regarding the property located at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew is to be distributed

equally among Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and Graham Gibson.

*The Properties at 25 Evans Avenue, St. John's Heights in the parish of Saint Catherine, Bellwood Cottage, Simon in the parish of Saint Catherine, 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew and 36 Union Square, Kingston 5 in the parish of St. Andrew*

**[56]** On the 23<sup>rd</sup> day of January, 2023 a Consent Order was made by the Honourable Mrs. Justice S. Wolfe-Reece varying certain of the Orders made by the Honourable Miss Justice S. Orr (Ag.). The relevant portions of the Order read as follows:

*"By consent of the parties, the properties at 25 Evan's Avenue, St. John's Heights in the parish of St. Catherine registered at Volume 1087 Folio 937 of the Register Book of Titles and Bellwood Cottage, Simon in the parish of St. Catherine registered at Volume 1283 Folio 943 of the Register Book of Titles are to be transferred to Racquel Gibson, Joel Gibson Jr, Dante Gibson, Carl Gibson, Stephen Gibson, Shannon Gibson, Wentworth Gibson, Mayda Gibson, Graham Gibson, Gavin Gibson and Kharalee Gibson as tenants-in-common. That the Registrar of Titles is ordered to lodge a caveat in respect of the interest of the minor beneficiary, Dante Gibson.*

*By the consent of the parties, the property at 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew registered at Volume 972 Folio 457 of the Register Book of Titles is to be transferred to Joel Gibson Jr, Dante Gibson, Carl Gibson, Stephen Gibson, Shannon Gibson. Wentworth Gibson, Mayda Gibson, Graham Gibson, Gavin Gibson, Kharalee Gibson and Pasha Ricketts as tenants-in-common. That the Registrar of Titles is ordered to lodge a caveat in respect of the interest of the minor beneficiary, Dante Gibson.*

*By the further consent of the beneficiaries, the property at 36 Union Square, Kingston 5 in the parish of St. Andrew registered at Volume 1383 Folio 510 of the Register Book of Titles is to be transferred to Pasha Ricketts and Dante Gibson as tenants-in-common after Pasha Ricketts settles all outstanding liabilities associated with the said premises. That the Registrar of Titles is ordered to lodge a caveat in respect of the interest of the minor beneficiary, Dante Gibson."*

**[57]** The Consent Order, therefore clearly directs the course that is to be adopted in relation to each of these properties and therefore, this clearly settles any issue relating to how these properties are to be distributed. The Administrator-General

is to proceed to give effect to the Orders of the Honourable Mrs. Justice S. Wolfe-Reece on the 23<sup>rd</sup> January, 2023

*The Desire of Carl Gibson, Graham Gibson and Mayda Gibson to purchase the properties at 25 Evans Avenue, St. John's Heights in the parish of Saint Catherine, Bellwood Cottage, Simon in the parish of Saint Catherine and 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew*

[58] In relation to the desire of Carl Gibson, Graham Gibson and Mayda Gibson to purchase the properties at 25 Evans Avenue, St. John's Heights in the parish of Saint Catherine, Bellwood Cottage, Simon in the parish of Saint Catherine, 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew, the Administrator-General for Jamaica would not be in a position to entertain any such request in the absence of a consensus between the parties. In these circumstances, the Administrator-General's duty at this stage, is to proceed with the transfers of these properties to the relevant beneficiaries as named in the Consent Order made on January 23, 2023. Thereafter, if the beneficiaries are unable to arrive at a consensus as to how to proceed in relation to the property, it is for them to make any necessary application pursuant to the **Partition Act** for Orders relating to the sale of the property and for the distribution of the proceeds of sale as directed by the court. The court can at that stage also make Orders as to how the sale is to be treated with and whether any beneficiary should be given first option to purchase the property.

*The Interest of Kayan Gibson in the Properties and/or Assets*

[59] In relation to Kayan Gibson's interest in the properties at 25 Evan's Avenue, St. John's Heights in the parish of St. Catherine, Bellwood Cottage, Simon in the parish of St. Catherine, 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew, her potential interest in the property at 20 North Parade in the parish of Kingston, the Intellectual Property (Copyright) and any other property and/or in the estate of the deceased, based on the affidavit evidence of Miss Peta-Gaye

Munroe, attempts were made to contact her to no avail. However, the Court notes that although the 'Whereabouts Advertisement' which was published in the Jamaica Observer on April 25, 2023 in order to locate Kayan Gibson was fairly recent, only one such advertisement was done. In the Court's view, this was not sufficient to have brought the matter to Miss Kayan Gibson's attention.

**[60]** In these circumstances, the Administrator-General for Jamaica is to make further attempts to locate Miss Kayan Gibson by way of two (2) Whereabouts Advertisements, one week apart in the Jamaica Observer Newspaper. If Miss Kayan Gibson fails to make contact with the Administrator-General's Department within two (2) months of the date of the last Whereabouts Advertisements being placed in the Jamaica Observer Newspaper, then the Administrator-General for Jamaica is to proceed to give effect to the Orders made affecting the properties in which she has an interest and all other assets related to the testator's estate in which she has an interest, and to divide any such interest in respect of these properties and/or assets equally among the other beneficiaries with interest in such properties and/or assets to the exclusion of Miss Kayan Gibson.

## **ORDERS AND DISPOSITION**

**[61]** Therefore, in all the circumstances of this case and having regard to the analysis and discussion in the foregoing paragraphs relating to the testator's intention regarding his Last Will and Testament dated the 19<sup>th</sup> day of February 2008, the Court makes the following Orders:

- 1) The property located at 20 North parade, in the parish of Kingston is to be rented until Danté Gibson attains the age of twenty-one (21) years old. The Administrator-General for Jamaica is to do a yearly account of all funds received from the rental of the property since the death of the deceased and apportion such funds equally among all the children who were under twenty-one (21) years old at the date of death of the testator (that is, Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and



Graham Gibson) taking into account the number of years from the date of death of the testator until the each child attains twenty-one years old.

- 2) Where the lease agreement relating to the property located at 20 North Parade in the parish of Kingston provides for the increase in the rent of the property, then the Administrator-General for Jamaica is to determine the increase in the rental rate for the property located at 20 North Parade in the parish of Kingston in accordance with those provisions.
- 3) Where the lease agreement fails to provide for how the increase in the rental rate for the property at 20 North Parade in the parish of Kingston is to be determined, the Administrator-General for Jamaica shall apply to an Assessment Officer of the Rent Assessment Board within thirty (30) days of the date of this Order to have the standard rent determined and shall disclose to the Assessment Officer the terms and conditions of the lease and all the circumstances which will affect the standard rent of the premises pursuant to *section 18 (2)* of the **Rent Restriction Act**. The standard rent specified by the Assessment Officer in the Certificate of Assessed Rent issued in respect of the said property shall, with effect from the date specified therein as the date from which the Certificate takes effect, be the standard rent applicable to the property.
- 4) Where a Certificate of Assessed Rent is issued by an Assessment Officer in relation to the property located at 20 North Parade in the parish of Kingston, any subsequent annual increase in the standard rent of the said property is to be undertaken in accordance with *section 3(1)* of the **Rent Restriction (Percentage of Assessed Value) Order 1983** which provides for the annual increase in the standard rent of 7 ½ % in the circumstances stated in the **Rent Restriction Act** and the said Order.
- 5) Any increase in the rental rate of the property at 20 North Parade in the parish of Kingston is to be subject to the relevant notices being given by the

Administrator-General for Jamaica to the tenant of the property. Any termination of the lease should also be done in accordance with the lease agreement.

- 6) The Administrator-General for Jamaica shall not collect any retroactive rent in relation to the property located at 20 North Parade in the parish of Kingston.
- 7) Upon Danté Gibson attaining twenty-one (21) years old, the property at 20 North Parade in the parish of Kingston is to be transferred to Carl Gibson, Joel Gibson Jr, Stephen Gibson, Graham Gibson, Gavin Gibson, Wentworth Gibson, Danté Gibson, Mayda Gibson, Shannon Gibson, Kharalee Gibson and Kayan Gibson as tenants-in-common in equal shares.
- 8) The proceeds of sale regarding the property located at 145 Old Hope Road, Kingston 6 in the parish of St. Andrew is to be distributed equally among Kharalee Gibson, Wentworth Gibson, Gavin Gibson, Shannon Gibson, Danté Gibson and Graham Gibson.
- 9) The Administrator-General for Jamaica is to proceed to give effect to the Orders made by the Honourable Mrs. Justice S. Wolfe-Reece on the 23<sup>rd</sup> January, 2023 in relation to the properties located at 25 Evan's Avenue, St. John's Heights in the parish of Saint Catherine, Bellwood Cottage, Simon in the parish of Saint Catherine, 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew and 36 Union Square, Kingston 5 in the parish of St. Andrew.
- 10) If the beneficiaries are unable to arrive at a consensus as to how to proceed in relation to any sale or purchase of the properties located at 25 Evans Avenue, St. John's Heights in the parish of Saint Catherine, Bellwood Cottage, Simon in the parish of Saint Catherine and 4 Blythwood Drive, Beverley Hills, Kingston 6 in the parish of St. Andrew and any subsequent sale or purchase of the property located at 20 North Parade in the parish of Kingston, it is for the said beneficiaries to make any necessary application pursuant to the **Partition Act** for Orders relating to the sale of any of the said properties and for the

distribution of the proceeds of sale as directed by the Court. The Court can, at that stage, make Orders relating to how the sale is to be conducted and whether any beneficiary should be given first option to purchase any of the said properties.

- 11) The Administrator-General for Jamaica is to make further attempts to locate Miss Kayan Gibson by way of two (2) Whereabouts Advertisements, one week apart in the Jamaica Observer Newspaper. If Miss Kayan Gibson fails to make contact with the Administrator-General's Department within two (2) months of the last Whereabouts Advertisement being placed in the Jamaica Observer Newspaper, then the Administrator-General for Jamaica is to proceed to give effect to the Orders made affecting the properties in which she has an interest and all other assets related to the testator's estate in which she has an interest, and to divide any such interest in respect of these properties and/or assets equally among the other beneficiaries with interest in such properties and/or assets to the exclusion of Miss Kayan Gibson.
- 12) Costs of this application are to be borne by the Estate of Joel Gibson otherwise called Joel Augustus Gibson otherwise called Joe Gibbs.
- 13) The Applicant's Attorney-at-Law is to prepare, file and serve the Formal Order herein on all the beneficiaries and/or their Attorneys-at-Law.