

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2004 HCV01369

BETWEEN	LUCILLE VAZ	CLAIMANT
AND	DANE WISDOM	1ST DEFENDANT
AND	JOY WISDOM	2ND DEFENDANT
AND	ANDRE WISDOM	3RD DEFENDANT
AND	TYRONE WISDOM	4TH DEFENDANT

Mr. Raphael Codlin and Ms Melissa Cunningham for Claimant/Respondent
Mr. Owen Crosbie and Mrs. Ilean Crosbie-Salmon for Respondents/Applicants
3rd Defendants and the wife of 2nd Defendant

Heard in Chambers 29th October, 2010

Coram: D.O. McIntosh, J

This is an application to set aside an order of N. McIntosh, J (as she then was) made on the 29th October, 2009.

The application was made on the grounds that there was no evidence of service:

- (a) personally on the Defendants; and
- (b) on Mr. Owen Crosbie

At the hearing Mr. Crosbie indicated that the application was to set aside order for sale of property made by Mrs. Justice N. McIntosh, filed November 4, 2009 on the grounds that judgment was irregular and for costs.

Mr. Codlin indicated that he would be taking a point in *liminae* .

- (1) There is strong authority of the court not to lend its authority to any litigant who disobeys any rules or order of the court ; and
- (2) The court as constituted has no jurisdiction to set aside the order.

Mr. Codlin responded that these submissions were fraught with mistake of fact and law.

Submissions cannot be made without evidence on oath.

If Mr. Codlin wanted to make an application he had to do so in writing and serve same. This he had not done, so he should not be heard. His own application was made under Rule 11.8.3 of the C.P.R. 2006. He emphasized that he placed no blame on the judge who made the order but stated that the judgment was irregularly obtained because –

- (a) Court would have had no jurisdiction to make any order, because it was to the certain knowledge of the Claimant who is an aunt of the relevant deceased and the attorney who had actual knowledge of the deceased the only Defendant at that time.
- (b) The court was not seized with the information because the attorney who appeared for the Claimant wickedly and criminally refused to inform the court and that the court had no jurisdiction as the Defendant had died.

- (c) Had the court been apprised of the death of the deceased Dane Wisdom the court would not have made the order.
- (d) There is no evidence of service on the parties before the court as required by law. The only one who was served had died. Therefore the order made by the court was irregular.
- (e) Paragraph 10 upon receipt of judgment be endorsed thereon – obtained by fraud and misrepresentation.
- (f) There is no evidence of service on parties.

When asked if Mr. Crosbie had produced the title he said he had not done so but would do so if requested by the court.

Applicants submissions were much longer than the time allotted and apart from the points listed above, were basically repetitive and were spent lambasting Mr. Codlin.

When counsel was reminded that he had been in this matter from its inception and had a duty to the court and or to his client to have been present at the hearing as he was the attorney-at-law on record, he took offence. He intimated that he expected Claimant's attorney to hold for him or on behalf of his clients.

This court ordered as following:

1. Respondents application filed 16/11/09 is hereby refused.
2. Costs to the Claimant to be taxed if not agreed.
3. Leave to appeal granted to Respondent.

The court formed the view that it had no jurisdiction to set aside the order of N. McIntosh, J for the following reasons.

The application does not fall within the scope of either.

Part 13(2) of the CPR 2006 or Part 13(3) of the CPR 2006.

- (i) Before the court no issue was raised that the judgment was wrongly entered.
- (ii) It was never suggested that the Defendant had any real or reasonable prospect of success on the issues raised in the case before the court.
- (iii) The application was not made as soon as possible after the order was made.
- (iv) No good explanation was given for the delay in making the application to set aside the order.
- (v) No good explanation was given for Defendants failure to attend at the hearing.

It must be noted that the Defendants were served as per order of the court and had been afforded every opportunity to have attended the hearing.

The blatant refusal of the Defendants to attend the hearing or to be represented if they wanted to contest Claimant's application must have been a deliberate ploy on their part and an indication of their contempt for the court.

Throughout the hearing Mr. Crosbie was treated with the respect given to a venerable friend. This court perceived his tirade directed at Mr. Codlin, as mere showboating for his clients. Indeed, at the end of the court hearing he

stayed behind to enquire of me, why I had not visited him at his home, with a mutual friend of "ours", one Allan Stewart of Atlanta.

His present animosity towards me may be out of pique. This court will strive as long as it is able, always to do its duty, without fear or favour, affection or ill-will.