

IN THE SUPREME COURT OF BELIZE A.D. 2009

CLAIM NO. 953

	( RAUL CORREA	1 <sup>st</sup> CLAIMANT
	( AROLDO CORREA	2 <sup>nd</sup> CLAIMANT
	( FILODELFO CORREA	3 <sup>rd</sup> CLAIMANT
	( FELIPE CORREA JR.	4 <sup>th</sup> CLAIMANT
	(	
BETWEEN	( AND	
	(	
	(ADELITA KEME nee CORREA	DEFENDANT
	( Manager of the Business and assets	
	(Forming part of the property owned jointly	
	(By the Estate of Micaela Correa and Felipe Correa Sr.	
	(Her widower	

**BEFORE: Madam Justice Minnet Hafiz-Bertram**

**Appearances: Mr. Hubert Elrington S.C. for Claimant/Defendants  
Mr. Oscar Sabido S.C. for Defendants/Applicant**

**DECISION**

1. The Applicant/Defendant, Adelita Keme applies to the Court pursuant to **Part 26.3 (1) (a) (b) and (c)** of the **Civil Procedure Rules 2005** for an Order or Orders that the claim herein be struck out.
2. The grounds of the application are that:

The Claimant's claim has failed to comply with **Part 66 Rules 66.1 (1) (a) & 66.1 (1) (b) and 66.1 (2)**.

The statement of case discloses no reasonable grounds for bringing a claim by the Claimants:-

- i. As persons entitled to be appointed as Trustees of the estate of or administrators of the estate of the late Micaela Correa (deceased).

- (ii) As persons entitled to be appointed as trustees of the business of Felipe Correa Sr.
  - (iii) As persons entitled as equitable owners of the business of Felipe Correa Sr. and of the lands, equipment, tools, licenses, bank accounts etc. used in the business.
- 3. That the statement of claim is an abuse of the process of the Court.
- 4. The application is supported by an affidavit of Adelita Keme, the Defendant who deposed that after her father suffered his second stroke on May 11<sup>th</sup>, 2009 she became fully responsible for her father's business. That before May 11<sup>th</sup>, 2009 she was entered on his Scotia Bank account and only assisted her father with his cane farming business because he could still do his own management.
- 5. The Defendant says that her management has been hindered as the Claimants forcefully took over all of her father's business after he suffered his second stroke and have deprived her father of all the cane cut from her father's lands and delivered her father's cane to the sugar factory into the cane licences of persons other than themselves to hide what they are doing.
- 6. The Defendant says that Felipe Correa Sr. is the proprietor of Four (4) parcels of cane land on which he has conducted the business of cane farming for more than thirty (30) years and is the proprietor of a cane license of 1800 tons. The four parcels of land are the freehold property of Felipe Correa Sr. and have been his sole property at all times. See Exhibit "**AKC-1**" for a bundle containing copies of the four titles for the said parcels of Felipe Correa Sr.
- 7. The Defendant further deposed that Felipe Correa Sr. has nine daughters and four sons, the latter being the Claimants. That the Claimants have worked for Felipe Correa Sr. intermittently and at various times and during

the times that they worked with Felipe Correa Sr. they did so because they had the benefit of using their father's vehicles, loaders, tractors and other farming equipment to deliver cane under their own individual cane licences and in return they helped their father.

8. At paragraphs 7 and 8 of her affidavit, the Defendant deposed that the First and Second Claimants have lived for sometime in the United States. All the Claimants have failed to work consistently with Felipe Correa Sr. and have worked as employees when they wanted to benefit from their father's equipment. That the Claimants own various parcels of cane land and their own individual cane licences which Felipe Correa Sr. gave to them as a gift on various occasions in the past and the Claimants have also bought other cane lands from other persons from time to time.
9. Ms. Keme, the Defendant further deposed at paragraphs 10 and 11 of her affidavit that there is an additional Parcel 36 - Block 1- Registration Section Ramonal Zopote S.E comprising 36.545 acres of land which is registered in the name of Felipe Correa Sr. and the third Claimant Filodelfo Correa as joint tenants. See Exhibited "**AKC-2**" for a copy of the said title for parcel 36. That parcel 36 was farmed up to last year 2008-2009 by Felipe Correa Sr. but the cane has been accounted for and divided between Felipe Correa Sr. and the Third Claimant.
10. The Defendant says that another parcel of land Parcel 471 – Block 1- Santa Clara/San Roman Registration Section comprising 4.25 Hectares (10.50 acres) is the property of Micaela Correa the widow of Felipe Correa Sr. who died on July 30th, 2007 intestate but letters of administration in her estate have not been applied for nor issued out of Supreme Court of Belize (Probate Side). That this parcel 471 is registered in the name of the estate of Micaela Correa but there has always been an understanding among the majority of the beneficiaries of the estate of Micaela Correa that the said

parcel 471 (10.50acres) be farmed by Felipe Correa Sr. for his own use and benefit during his life time until he dies. See exhibited "AKC-3" for a copy of the title for parcel 471.

11. Ms Keme at paragraph 14 of her affidavit states that apart from parcel 471 aforementioned comprising 10.50 acres the aforementioned four (4) parcels of land the property of Felipe Correa Sr. were at no time the property of his wife Micaela Correa nor has she owned them or held title for them. That there is no resulting trust that has come into existence in respect of the four (4) parcels of land referred to in paragraph 6 hereof whereby Felipe Correa Sr. holds any lands as trustee of the said Micaela Correa to convey one half of the said lands to the administrators of the estate of the said Micaela Correa as claimed in the statement of case in this claim.
12. At paragraph 16 of her affidavit the Defendant deposed that administrators have not as yet been appointed in the estate of Micaela Correa. That she is advised by her attorneys-at-law and verily believe it to be true that a resulting trust cannot exist after the demise of Micaela Correa and such a resulting trust could only have arisen upon the termination and dissolution of the marriage of Felipe Correa Sr. and Micaela Correa and upon application by Micaela Correa for the distribution of matrimonial property pursuant to section 148A to 148I of the Supreme Court of Judicature (Amendment) Act Chapter 82 and Section 16 of the Married Women's Property Act Chapter 176.
13. The Defendant further deposed that the Claimants have during the last cane crop 2009-2010 taken over by force, intimidation and threats the four parcels 371, 103, 166 and 403 the property of Felipe Correa Sr., as well as parcel 36 jointly owned by Felipe Correa Sr. and Filodelfo Correa the third Claimant, as well parcel 471 the property of the estate of Micaela Correa and have also taken over all the farming equipment for their sole use and

benefit and have deprived their father Felipe Correa Sr. of his own lands, the cane produce and all farming equipment therefore making it impossible to manage any business for her father as there has been no cane to deliver during the 2009-2010 cane crop.

14. That in the process of wresting away the parcels of land of Felipe Correa Sr. as well as parcel 471 and parcel 36 (jointly owned by Felipe Correa Sr. and Filodelfo Correa) and all the farm equipment, tractors, vehicles and tools etc. of Felipe Correa Sr, the Claimants have used physical force, threats, intimidation, coercion, dishonesty, and duress all as set out and particularized in the Defence filed in this action. That presently and for the cane crop 2009-2010 the Claimants unlawfully use and control all of the lands and assets including all of the farming equipment of Felipe Correa Sr. as if they are the proprietors thereof and no one can say anything to them for fear of being physically attacked or harmed.
15. The Respondents/ Claimants did not file any affidavit in response to the application by the Defendant/Applicant.

**Submissions by the Applicant/Defendant**

16. The first ground is that there has been failure to comply with Rule 66.1(a), 66.1(b) and 66.1(2).

*“This Part deals with-*

- (a) (i) *the administration of the estate of a dead person; or*  
(ii) *the execution of a trust under the direction of the court,*
- (b) *claims to determine any question or grant any relief relating to the administration of the estate of a dead person or the execution of a trust.*

Learned Senior Counsel, Mr. Sabido submits that (a) is applicable as it is an administration claim.

17. Learned Senior Counsel submitted that this claim has to do with property forming part of the property owned jointly by of estate of Micaela Correa and Felipe Correa Sr., widow, and allegations that the property falls under the estate of Micaela Correa. As such, it would be a claim to determine any question or grant any relief relating to the administration of the estate of a dead person, Micaela Correa, and therefore that is called an administration claim. That this must be done by a fixed date claim form. The Claimant has filed a general claim form and therefore there is a failure to file pursuant to Rule 26(3) and the court should therefore strike out the claim.
  
18. The second point comes under Rule 26.3(1)(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim. Learned Senior Counsel submits that the claim does not disclose a reasonable cause of action in that if it is an estate, there is no administrator yet appointed and an administrator or executor cannot in his functions give rise to a trust until when he has concluded his administration process. He has to be appointed first. Learned Counsel relied on **Commonwealth Caribbean Trusts Law, 2<sup>nd</sup> Edition by Kodilyne & Carmichael at page 23** where it states:

***Trusts distinguished from administration of estates***

.....

*The distinction between administration and trusteeship is often blurred, since it is common for a testator to appoint the same persons to be executors and trustees. The precise point at which an executor/trustee ceases to act as executor and commences to act as trustee depends upon the circumstances of the particular*

*estate but as a general rule, the transition will take place when the administration is complete, which may be evidenced by the executor's carrying in his residuary account.*

See also **Re Claremont [1923] 2 KB 718.**

*Some important differences between trusts and administration of estates are:*

- (a) *The basic function of the personal representatives is to wind up the estate by paying debts and death duties, and handing over the net residue to the persons beneficially entitled under the will or intestacy or to trustees (who may be themselves) to hold upon trust. ...*

*The function of the trustees, on the other hand, is to manage and administer the trust estate, which may continue for many years, and the duties and powers of trustees are varied; for example, trustees have a duty to invest trust funds, or, where the trust property is land, to let it to tenants and make it productive, and they have powers to insure the property, to settle claims and to apply income for the maintenance of minor beneficiaries.*

- (b) *Whereas a beneficiary under the trust has an equitable interest in the trust property as soon as the trust takes effect, a legatee, devisee or person entitled on intestacy has no legal or equitable interest in deceased's property until he receives an assent from the personal representatives. In the meantime, the legatee or devisee has only a chose in action in the form of a right to compel the due administration of the estate. The position is illustrated by **Comr of Stamp Duty v. Livingston (1964) 3 All ER 692. ....***

19. Learned Counsel submitted that in the **Livingston case** supra it was held that the widower did have a right or a duty to pay a state duty because simply she was a beneficiary until she could have gotten a right on the property as under an assent or a vesting of the property in her as beneficiary. That the Privy Council held that she was not the legal or equitable owner of the land, and so duty was not payable. The widow had only a chose in action, that is, a right to compel the administration of the estate, and that was situated in New South Wales, the estate of her and her husband's domicile.
  
20. Mr. Sabido SC submitted that in this matter it is about the estate and then jumping into trust. But at this time the estate has not been brought to fruition in the sense that it has been completed. That the properties which are alleged to be the properties of the estate are not made out in the claim, either in fact or in any other form. Learned Counsel submitted that there is only ten acres which belongs to the wife. That the other properties belong to the husband who is still alive and he has a right to dispose of his properties as he wishes. That the properties cannot be dealt with in this case as there is no estate. The only estate is the mother's estate and there is no property belonging to her that would set up a trust at this point such as a resulting trust.
  
21. Learned Senior Counsel submitted that the other grounds fall under the same principle. The equipment, tools, licence and so on, there is also no trust arising. It would only arise under an estate. That there is a distinction between trustee and administration in respect of personal property. That where you have the matter of trustees dealing with personal properties, they are doing it for the benefit of the beneficiaries. But in respect of personal property on the estate, it's for the benefit of the estate not for the beneficiaries but for the benefit of the estate. And one particular administrator can deal with personal property

as distinct from a trust where the trustees must all deal with the personal property. That in this case no such thing arises because there is no administration yet which has been obtained through the court by letters of administration and the property rightfully belongs to Mr. Correa Sr. and therefore it cannot be dealt with under either the guise of an administration or a trust.

**Submissions by Mr. Elrington SC for Claimants**

22. Mr. Elrington submitted that from the time a person dies and another person without obtaining administration intermeddles that person is affixed with a trust. That person becomes a trustee *de son tort* and holds the property in trust and is fully accountable at every stage.
23. Learned Counsel further submitted that at disclosure they will show how the properties were acquired and disclose the marriage certificate to show when the mother and father got married. At that stage, the Claimants will also produce evidence as to how the properties were managed, how the assets were distributed during the time the business was being run. That at this stage the Claimants have not put in or there is no order for disclosure on either side. Also, that the Claimants are in a position to compel them to disclose certain documents.
24. Mr. Elrington further submitted that there is no difficulty understanding who is an administrator and who is a trustee. The administration has certain specific functions. The trustees have certain specific functions. But there is no question that in this particular instance there is a business which involves land and a wife who has died and a husband who is senile. That the Claimants' claim shows clearly that the husband after the death of the wife was the person in charge of the business and had

land that belonged to the wife and also other assets that belonged to the wife and one of the brothers. That the Claimants have evidence to produce to prove this.

25. Learned Senior Counsel submitted that when disclosures are made it will show a trust. That the concept of trust is not only consensual, by meddling with assets of an estate, one become a trustee whether you want to become a trustee or not.

### **Determination**

26. It is unfortunate that after the death of a mother and having a father who is too ill to speak their thirteen children (nine daughters and four sons) find themselves before the court with regards to property dispute. The four sons are the Claimants in the matter before the court.

27. The Claimants are claiming the following:

1. *A Declaration that all lands held by Felipe Correa Sr, of Santa Clara Village, Corozal District, Belize are held by him as Trustee to convey ½ of the said lands to the Administrators of the Estate of his late wife Micaela Correa.*
2. *A declaration that all moneys held at the bank, credit union, and or other financial institution in the name of Felipe Correa Sr., are held by him as Trustee to convey ½ thereof to the Administrator of the Estate of Micaela Correa.*
3. *A Declaration that the Cane Farming business carried on by Felipe Correa Sr., is owned jointly by him, the Administrators of the Estate of his late wife Micaola Correa, as Trustees, to hold the same during the*

*life of Felipe Correa Sr. on trust for sale, and with power during the life of Felipe Correa Sr, to postpone the sale and pay 1/3 of the net revenue of the estate until sale to Felipe Correa Sr, 1/3 to the estate of Micaela Correa and 1/3 to be divided equally between the children of Felipe Correa Sr. and Micaela Correa and after the death of Felipe Correa Sr. to sell the trust property and divide the net proceeds of sale equally between the children of Felipe Correa Sr. and Micaela Correa.*

- 4. An Order that four of the children of the said Felipe Correa and Micaela Correa, be appointed Trustees for sale of the said lands and business belonging to Felipe Correa Sr. and Micaela Correa with power to sale until after the death of Felipe Correa Sr., and with power to distribute the net income of the trust, during the life of Felipe Correa Sr. as set out in paragraph 3 above.*
- 5. An Order that the Defendant prepares and files at the Registry of the Supreme Court of Belize within two(2) months of her being ordered to do so, certified accounts of all her dealings with the properties and assets forming a part of the estate of Micaela Correa and Felipe Correa Sr.*
- 6. An Order that the cost of this application and the cost occasioned by the carrying out of the orders of the court emanating from this application be cost in the cause.*

28. The evidence before the court is that Felipe Correa Sr. the father of the thirteen children is still alive and it is my view, that any order sought for sale of lands and business belonging to Felipe Correa is premature. In the event that Felipe Correa Sr. has not disposed of his property by Will or otherwise then after his death his children would be entitled to his estate.

29. Mr. Correa Sr. is ill and the evidence shows that before May 11<sup>th</sup>, 2009 the Defendant, his daughter Adelita Keme was entered on his Scotia Bank account and assisted her father with his business because he could still do his own management. She says in her affidavit evidence that it was after her father suffered his second stroke on May 11<sup>th</sup> 2009 she became fully responsible for her father's business. The Defendant was at no time intermeddling with her mother's estate which according to the evidence is one piece of property and was under the control of her father.
30. The Claimants are asking for a Declaration that the lands held by their father and all monies held by him are held by him as Trustee to convey half to the Administrator of the Estate of his late wife Micaela Correa. The evidence before the court is that Parcel 471 is registered in the name of Micaela Correa. See **Exhibit "AKC-3"**. This property clearly falls under her estate and an administrator has to be appointed to administer the estate.
31. As for the contention that the other properties are held by Mr. Correa Sr. as Trustee, I agree with Mr. Sabido SC that the claim does not disclose a reasonable cause of action in that if it is an estate, there is no administrator yet appointed and an administrator or executor cannot in his functions give rise to a trust until when he has concluded his administration process. See **Commonwealth Caribbean Trusts Law, 2<sup>nd</sup> Edition by Kodilyne & Carmichael** at page 23 relied on by Learned Counsel Mr. Sabido.
32. Further, I agree with Learned Senior Counsel, Mr. Sabido that the properties which are alleged to be the properties of the estate of Micaela Correa are not made out in the claim. The evidence shows that a ten acre parcel belongs to the wife and the other properties belong to the

husband. See **Exhibit “AKC-1”** for bundle containing copies of four titles in the name of Felipe Correa Sr. Mr. Correa Sr. has a right to dispose of his properties as he wishes. These properties do not form part of the estate of the wife. There is also one parcel of land which is jointly owned by Mr. Correa Sr. and his son Filodelfo Correa. See **Exhibit “AKC – 2”**. The Defendant is not opposing any dealings with this parcel.

33. The Claimants have not responded to the evidence filed in this case by the Defendant that Mr. Correa Sr. has title to four parcels of land and bring evidence to show the existence of a resulting trust for the late wife to those properties. The court is not satisfied that at disclosure stage that the Claimant would be able to produce such evidence. They have brought absolutely no evidence to show the existence of a resulting trust.
34. Learned Senior Counsel, Mr. Sabido submitted that there is only the issue of the property of the estate of Micaela Correa which is 10.5 acres and the joint property belonging to the father and son. Counsel undertakes that the Defendant can deal with those two properties at any time. That they are prepared to settle this aspect but cannot at this point agree that the properties and the personal assets of Mr. Felipe Correa fall under a trust or under an administration.
35. For the reasons stated, I agree with Learned Senior Counsel that the properties of Mr. Felipe Correa cannot fall under a trust or under an administration. In my view, the statement of case discloses no reasonable grounds for bringing a claim by the Claimants as persons entitled to (i) be appointed as Trustees of the estate of or administrators of the estate of the late Micaela Correa; (ii) as persons entitled to be appointed as trustees of the business of Felipe Correa Sr. and (iii) as persons entitled as equitable owners of the business of Felipe Correa Sr.

and of the lands, equipment, tools, licenses, bank accounts etc. used in the business. The Claim is therefore struck out pursuant to **Part 26.3 (1) (c)** of the **Civil Procedure Rules 2005** as it discloses no reasonable grounds for bringing the claim.

36. Costs to be paid by the Claimants to the Defendant in the sum of \$3,000.00

.....  
Minnet Hafiz-Bertram  
Supreme Court Judge

Dated this 23<sup>rd</sup> day of September, 2010.