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IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
 PROBATE AND ADMINISTRATION JURISDICTION

In the matter of the Deceased Persons Estates'
 Administration Act, Chapter 12:01, Laws of
 Guyana.

– and –

In the matter of the Estate of IRA VERNON
 GODETTE, deceased.

BETWEEN:

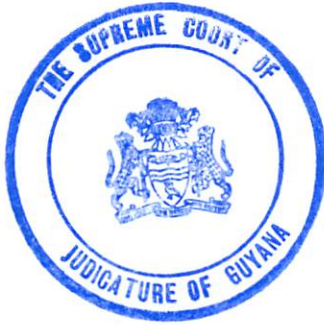
VERNA GLENIFFER GODETTE

Plaintiff

– and –

RICHARD THEODORE VAN SLYUYTMAN

Defendant



CORAM: Mr. Justice Franklin D. Holder

Fitz L.E. Peters with Mr. Moenudin M. McDoom Jnr. for Defendant.

Mr. Neil A. Boston for Plaintiff.

RULING:

In 2009 the applicant, a beneficiary of the estate of Ira Vernon Godette deceased, instituted these proceedings seeking some fourteen (14) orders against the Respondent Richard Theodore Van Slyuytman the executor of the estate of the deceased.

I think it most appropriate to set out the orders sought in the Originating Summons which is intituled in the matter of the Deceased Persons Estates' Administration Act, Chapter 12:01.

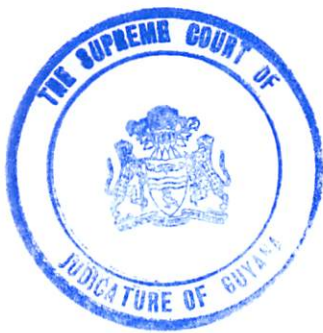
- (a) An account of all monies belonging to the Estate of Ira Vernon Godette that come to the hands of the Defendant as executor of the estate of Ira Vernon Godette, deceased.
- (b) An account of all monies received by the Defendant from the sale of the deceased 2 (two) 75 (seventy-five) Horse Power Yamaha out board engines.

- (c) An account of the deceased dredging equipment.
- (d) An account of all monies property expended by the Defendant for and on behalf of the Estate of Ira Vernon Godette, deceased, in obtaining probate of the deceased Will and vouching where necessary of such accounts.
- (e) An account of all monies paid by the Defendant for legal fees in relation to the obtaining of probate of the Estate of Ira Vernon Godette, deceased.
- (f) An account of all monies paid by the Defendant as legal and conveyancing fees in respect of the vesting of the properties viz:

(i) “South half of lot numbered 35 (thirty-five), second Avenue, Bartica, in the Bartica Local Government District, situate in the County of Essequibo, Republic of Guyana, the said lot being shown on a diagram of the Town of Bartica, by William Chalmers, Sworn Land Surveyor, dated 19th August, 1887, and deposited in the Deeds Registry at Georgetown on the 26th day of January, 1889, with the building and erections thereon, save and except a rage of 5 (five) rooms thereon, the property of Joseph Ferdnanded”.

(ii) “Lot numbered 90 Second Avenue, in the Bartica Local Government District, situate in the County of Essequibo, Republic of Guyana, the said lot containing an area of 0.263 (nought decimal two six three) of an acre being shown on a plan by J.B. Banford, Government Land Surveyor, dated 26th September, 1942, and recorded in the Department of Lands and Surveys as Plan No. 4538, with the 2 (two) buildings and erections thereon”.

(iii) “A lease for a term of 999 (nine hundred and ninety nine) years in respect of Sub-lot lettered ‘D’ being a portion of lot 26 (twenty-six) First Avenue, Bartica in the Bartica Village District, in the County of Essequibo, Republic of Guyana, being laid down and defined on a plan by William Chalmers, Sworn Land Surveyor dated 19th August, 1887, and deposited in the Deeds Registry on the 26th January, 1889, the said sub-lot lettered ‘D’ containing an area of 2,376 (two thousand three hundred and seventy-six) square feet being shown on a plan by J. P. Lilboy Benny Sworn Land Surveyor,



dated 29th May, and deposited in the Deeds Registry at Georgetown on day of
no building thereon”.

to the named beneficiaries in the Last Will and Testament of Ira Vernon Godette,
deceased.

(g) Disclosure by the Defendant of the amount of interest the Defendant received
from the hereinafter mentioned bank accounts viz:-

- (i) Citizen Bank Account CD No. 12107
- (ii) Citizen Bank Account CD No. 12117
- (iii) Bank of Baroda Account No. 1094
- (iv) N.B.I.C (Republic Bank) Account TD No. 1217101
- (v) Scotia Bank Account No. 610719
- (vi) Scotia Bank Account No. 163265
- (vii) N.B.I.C Account No. 000-129-7 (Bank of Guyana ROE 196.05)

(h) An account of the interest obtained from the following accounts viz: and the use
made of such interest.

- (i) Citizen Bank Account CD No. 12107
- (ii) Citizen Bank Account CD No. 12117
- (iii) Bank of Baroda Account No. 1094
- (iv) N.B.I.C (Republic Bank) Account TD No. 1217101
- (v) Scotia Bank Account No. 610719
- (vi) Scotia Bank Account No. 163265
- (vii) N.B.I.C Account No. 000-129-7 (Bank of Guyana ROE 196.05)



(i) A statement of any outstanding indebtedness of the Estate of Ira Vernon
Godette, deceased and the name of persons to whom the estate is indebted and
the amount owe to each creditor.

(j) An account of all monies paid by the Defendant to other persons or institution
on behalf of the estate of the deceased. The names of those persons and/or
institutions to whom the payments were paid, the dates the payments were made
and receipts supporting same.

(k) An inquiry as to whose name the Defendant is keeping the balance of the
monies that belong to the Estate of Ira Vernon Godette, deceased, and in which
bank, and if it turns out that the Defendant is keeping same in his personal

account an order be made that same should be transferred into an account to be opened in the name of the Defendant in his representatives capacity and record of same to be produced for the inspection of the Court.

- (l) An inquiry of what balance of the monies remained in the Defendant's hands or under his control after giving him credit for all monies properly expended by him for or on behalf of the Estate of Ira Vernon Godette, deceased, in the course of winding up same.
- (m) An Order that the Defendant, do pay to the Plaintiff and the other devisees such sum as may be found due upon taking said account after making the said inquiry including interest thereon.
- (n) Any other relief that the Court may deem necessary.
- (o) Costs.



On the 21st October, 2015 I granted orders as prayed for in terms paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of the Originating Summons. I further ordered that the accounts provided be verified by affidavit and supported by vouchers, receipts and any other supporting documents.

On the 1st April, 2016 the Respondent filed an Affidavit of Accounts with exhibits sworn to on the 31st March, 2016 in compliance with my orders of the 21st October, 2015.

After perusing this Affidavit of Accounts filed, Mr. Boston for the Applicant took issue with the Respondent's claim against the estate for the sum of \$500,000.00 (five hundred thousand dollars) as being legal fees paid or to be paid for his defence of the proceedings herein.

The sole issue I am called upon to decide at this point in the proceedings is whether the costs of defending these proceedings should be paid out of the assets of the deceased estate or should it be borne by the Respondent personally.

The deceased last Will and Testament had been probated by the Respondent since the 30th November, 2004.

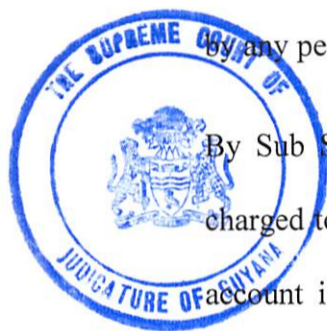
Section 46 of the Deceased Persons Estates' Administration Act obligates every executor and administrator to administer and distribute the estate according to any valid Will not later than twelve (12) months from the day on which he/she obtained Probate or administration.

He is also obligated to file within that time a full and true account, verified by affidavit and supported by vouchers, of the administration and distribution of the estate.

If the account filed is not the final account it must state all debts due to the estate still outstanding and all property, goods and effects still unsold and unrealized, and the reasons why they have not been collected, sold, or realized as the case may (See S. 46 (3)).

As long as the estate is not fully administered an executor is required every twelve (12) months after filing the first account to render further accounts of his administration and distribution until the estate has been fully administered and distributed.

This section also provides that the accounts so filed shall be open at the Registry for inspection by any person interested in the estate.



By Sub Section 9 an executor or administrator is entitled to recoup from the estate he is charged to administer all costs and expenses of and attendant on the rendering and filing of an account if, this is most important, the account is filed within the time prescribed and not otherwise.

Where an executor or administrator fails to file the account with the Registrar it is provided by Section 47 (1) of the Act that the Registrar or any person having an interest in the estate may apply to the court for an order calling upon the executor or administrator to show cause why the account has not been filed as required under Section 46.

This provision is specific, the application to the Court is for an order that the executor show cause why he has not filed his account. It is further provided that within a month prior to any application to the court, the Registrar or any person interested in the estate "Shall", which I consider as imperative, apply by letter to the executor or administrator requiring him to file his account on pain of being called upon to show cause. It is only after complying with this requirement of applying by letter to the defaulting executor that the person interested in the estate may apply to the court pursuant to Section 47 (1).

Another provision of the Act which helps to inform my ruling is Section 47 (3), which provides as follows;

The costs adjudged to the Registrar or other person aforesaid upon any process sued out by him or on his behalf shall be payable by the executor or administrator in default personally and shall not be chargeable to the estate under administration unless the executor or administrator is authorised by the Court to do so.

Unlike Section 47 (1) of the Act, which provides for an applicant to approach the Court for an order that an executor show cause why he has not complied with Section 46 the instant proceedings seek orders asking the Respondent to provide an account to the Court relative to his administration and distribution of the deceased estate. These orders can properly be sought under Section 37 (3) (c), (e) and (g) and Order 43 rules 2, 3 (c), (e) and (g) which provide as follows:

S.37 (3) The Court shall have full jurisdiction to entertain and shall dispose of all or any of the following questions or matters, that is to say--

- (c) The furnishing of any particular accounts by the guardian, executor, administrator, or person administering as aforesaid, and the vouching, when necessary, of those accounts;
- (e) directing the guardian, executor, administrator, or person aforesaid to do or abstain from doing any particular act in that character;
- (g) the determination of any question arising in the administration of the property or the performance of any duty by the guardian, executor, administrator or person aforesaid.



Order 43.2 Application under section 37 of the High Court Act shall be by originating summons.

- 3 the executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir or next of kin of a deceased person, or as *cestui que* trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor

or other person as aforesaid, may take out, as of course, an originating summons returnable in chambers before a Judge for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, that is to say, the determination, without an administration of the estate or trust, of any of the following questions or matters –

- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching when necessary of such accounts;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (g) the determination of any question arising in the administration of the estate or trust.



Where an application is made to the Court pursuant to these provisions Order 43 rule 13 (2) enjoins the applicant to inter alia intitle the Summons in the matter of the Act under which the application is made and specify in the body the particular section or sections of the Act under which relief is sought.

As alluded to these proceedings are intituled in the matter of the Deceased Persons Estates' Administration Act, Cap: 12:01, no other Act is invoked. No Section of that Act is referred to in the body of the Summons and the orders prayed for do not ask the Respondent to show cause as provided for under Section 47 (1) of that Act.

Although the Originating Summons is not intituled in the High Court Act Cap. 3:02 and there has been non compliance with Order 43 rules 13 (2), consequent upon the orders sought and how the Court and the litigants have treated with this matter I find that the Court and the litigants considered the proceedings as being brought under the provisions of Section 37 of the High Court Act and Order 43 rules (2) and (3) of the Rules of the High Court. The failure of the applicant to intitule the application, In the matter of the High Court Act and to comply with Order 43 rules 13 (2) was an irregularity which was waived by the Respondent.

I find that the Respondent did not comply with his statutory obligations under Section 46 of the Deceased Persons Estates' Administration Act which was to file full and true accounts of his

administration and distribution of the deceased estate within the prescribed times. The principal purpose for filing these accounts is to provide persons interested in an estate with information relative to the status of the administration and distribution of the estate.

It is my opinion that where an executor or administrator fails to honour his order obligations under Section 46 any person interested in the estate may approach the Court either under Section 47 (1) of the said Act for relief in the form provided therein or under Section 37 (3) of the High Court Act Chapter 3:02 and Order 43 rules 2 and 3 which allow for relief in a different form.

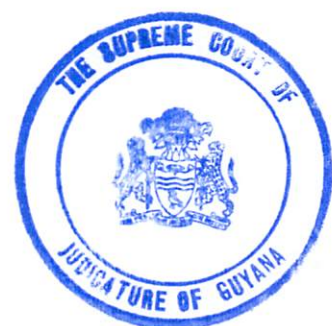
Where an applicant comes by way of Section 37 of the High Court Act there is no obligation on the applicant to comply with the condition as prescribed for under proviso (a) of Section 47 (1) of the Deceased Estates' Administration Act which stipulates that he first apply by letter to the defaulting executor requiring him to file his account with the Registrar.

I am of opinion that all the questions raised by the orders prayed for in the Originating Summons would have been answered had the Respondent complied with the requirement of Section 46 of the Deceased Persons Estates' Administration.

I find that it was consequent upon the failure of the Respondent to honour his statutory obligations under Section 46 these proceedings were brought, since all the orders sought save one could all have been addressed in the accounts had they been filed as prescribed by statute. This was a failing of the Respondent in executing a statutory obligation of his as executor, had he filed his accounts in the time stipulated there would have been no justification for the Applicant instituting these proceedings. In the circumstances it would be wrong and unjust to have the Estate bear the cost of defending these proceedings.

In the premises it is ordered that any sum claimed as legal fees by the Respondent against the estate relative to the defence of these proceedings as shown in the Affidavit of Accounts Sworn on the 31st March, 2016 must be borne by the Respondent himself and not the estate of the deceased.


Franklin D. Holder
Puisne Judge
High Court Judge
Supreme Court of Judicature





Supreme Court of India
High Court Judge
Hon. Mr. Justice E. H. H. H.