

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 141 OF 2011



7-07-11

**IN THE MATTER OF AN EX PARTE APPLICATION FOR LEAVE TO SWEAR
DEATH IN RE ASTOR ALVINTINE RANGE**

IN CHAMBERS

BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

THE 6TH JUNE 2011

Appearances: Mr. Flanagan for the applicants (present with him Miss Adina Boxx and Ms. Lavilla Webb)

RULING

1. This is an application by Ms. Adina Boxx, the mother of Astor Alvintine Range, for leave to swear, on an application for letters of administration of the estate of her son, that he died on or about the 10th day of January 2010.
2. The application is made pursuant to Rule 47 of the Probate and Administration Rules (2008 Revision) which is in these terms:

“An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a judge and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance.”
3. In keeping with Rule 47, Ms. Boxx has filed an affidavit setting out the grounds of the application and particulars of insurance policies.
4. There are other affidavits in support from her daughter, from the estranged wife of the presumed deceased and from his Pastor, Rev. Husam Rochez – all speaking in compelling terms of the character and values of the presumed deceased such as to

dispel any doubt that had he been alive, he would not have forsaken his family and friends, leaving them to agonize about whether he is alive.

5. The circumstances of his disappearance – along with four others – were widely publicized when they occurred and are described in detail in the affidavit evidence. I quote from that of Adina Boxx:

“3. *I understand that on or about 10th January 2010, Astor Alvintine Range, (“my son”), assisted his friend Mr. Raynell Wood in fitting a new engine to a white and blue 26 foot canoe (“the Canoe”) owned by Mr. Wood.*

4. *On the morning of the said 10th January 2010, I understand that my son agreed to accompany Mr. Wood, his 13-year-old daughter Michelle Wood, 28-year-old Josh Gilman and 19-year-old Jeamie Avila on a 12 hour round fishing trip on the Canoe.*

5. *At around 7 a.m. the canoe with all the above mentioned on board left from the Newlands dock just off Leeward Drive in the Rackley’s area of Grand Cayman. I understand that at the time the canoe left the dock the weather conditions were terrible, the sea was extremely rough with a northerly breeze whipping up the surf and making for cooler than normal temperatures on the water. The conditions got worse as the day went on. I understand the sea swells got as high as 12 – 14 feet.*

6. *At around 11 pm that night, I was informed by my other son, Elsmar (a.k.a Roderick) Range of the events that had unfolded that day. I understand from him that when the canoe did not return as expected in the early evening, a missing persons report was filed with the Royal Cayman*

Islands Police Service ("RCIPS"). Owing to the late hour and my illness, my other son Roderick Range together with other family members went to the dock at Newlands from where the canoe had left.

7. *At that time it was very dark and the sea was extremely rough, in fact too rough for the Marine Unit to go out and search for my son and those who had accompanied him.*
8. *The following morning search teams from the RCIPS began looking for the canoe and those on board. They conducted searches by boat, with the aid of professional divers, volunteers and with helicopters. At around 3 pm that afternoon the canoe was located about 200 to 300 yards outside the reef that protects the North Sound, its anchor having gotten caught up on the reef. I am informed that even though the canoe was spotted it was sometime before it was able to be recovered as the seas were so fierce at that time the police rescue boats couldn't approach the craft until it had floated back inside the reef.*
9. *The RCIPS searched for several days and were unable to find my son. On the 14th January 2010, I understand that a yellow T-shirt belonging to my son was recovered by a diver and further that the cell phones belonging to those on board, which had been kept in a dry bag stopped working around 9.40am Sunday in the Rum Point area. I understand that the RCIPS believe that the canoe capsized around this time having taken on too much water. Exhibited hereto [1-3] is a true copy of a report provided to my attorneys by the RCIPS.*
10. *I have not seen or heard from my son since the said 10th January 2011 (sic) and I verily believe him to have*

accidentally fallen into the sea, as a result of the canoe capsizing and to be dead. I have inquired of his friends and other relatives both here and in Honduras and also of his wife, Gloria Range, and no one has heard anything of him or can suggest any other explanation of his disappearance.

11. *My son was happily employed by LIME, as a Technology Operations Technician, and had been so for 20 years. Working with LIME was not just a job to my son it was a passion. My son was very dedicated to his work and spent much of his time getting the Island's communication systems backup (sic) and working after Hurricane Ivan. He was a very outgoing person with a lot of friends and he had a good and happy life. We were very close and if he were alive I would have expected to have heard from him. He usually assisted his sister in providing for my care, as I am retired and have a number of health issues, and we normally spoke at least once a week. He also would usually accompany his sister to the US for her annual medical check-ups after her major surgery in 2004. He provided for his estranged wife and his stepson and was involved in his stepson's schooling and upbringing. I can think of no reason why my son should leave home voluntarily and not contact a member of his family or one of his friends"*

6. Mrs. Boxx did exhibit as her affidavit explains, the report issued by the RCIPS which summarises the results of the investigation into the incident in these terms:

"On Sunday 10th January 2010 between 12 midday and 3 pm, Astor Range and four other persons reportedly went to Sea in a White 28 ft. Jamaican Style canoe, which was powered by an 85 hp Yamaha outboard engine.

The weather condition was described as stormy and a small craft warning was in effect for the Cayman Islands.

Police investigation revealed that Astor Alvantine (sic) Range, DOB 9th November 1973, of Apt. C12, Silver Oaks, off Crewe Road in George Town, and others departed on their fishing trip from the Newlands launching dock located at Rackley's Canal in Newlands. Prior to departure, they were advised of the dangers the inclement weather posed.

About 10:17 pm that same date, the police received a report indicating that the party had not returned from their fishing trip. At the time of departure, Astor Ranger was said to have been dressed in a yellow T shirt, dark long pants and a dark blue slippers.

This report resulted in an extensive land/sea search, involving law enforcement, civilian agencies and volunteers.

The searches at sea resulted in the recovery of several items, which were later positively identified as belonging to the members of the party – however not belonging to Astor Range.

On Monday 11th January, 2010 about 3:08pm, the said 28ft Jamaican style canoe was located, overturned and partially submerged, about ¼ mile east of the main channel located in the Rum Point area of North Side.

Despite the extensive land/in-water searches involving local, regional and international agencies, to date no member of the fishing party inclusive of Astor Range has been located.

No suspicious circumstances have been revealed in relating to this investigation. However, there are sufficient grounds to presume death at sea.”

7. This being in nature an application for leave to swear to death as the precursor to an application for a grant of letters of administration in the estate of Astor Alvantine Range; it follows that the burden of proof of death on or since the particular date cited rests with the person who claims title to a grant. This is notwithstanding that in special circumstances, the affidavit to justify the order may be made by someone other than the applicant for the grant: see Tolley, Administration of Estates – Ed. Part [C2.3].

8. No will has been discovered and so the application proceeds on the basis of intestacy.
9. Here, Ms. Boxx, as the mother of the putative deceased is both a person with personal knowledge of relevant facts and the person who claims title to a grant. Others, in particular the estranged wife of the presumed deceased as explained in her corroborative affidavit, have disclaimed entitlement to the grant.
10. Orders for leave to swear death require strong evidence in support and such an order will be refused if any reasonable doubt arises about the presumed deceased's death: *Tolley's* (above, *ibid*).
11. The order is not, and will not be accepted as conclusive proof of death (*ibid*).
12. The following requirements, helpfully summarised in Halsbury's Laws of England Volume 102 (2010) 5th Ed. para 744; have been met generally to my satisfaction upon this application:

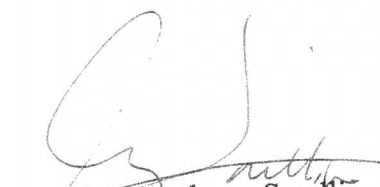
"The application must be supported by an affidavit setting out the grounds of the application and containing particulars of any insurance policies effected on the life of the presumed deceased together with such further evidence as the judge may require: (Re Saul [1896] P 151; Re Barber (1886) 11 P.D. 78). [Here details were given of two life insurance policies having the same named beneficiaries – the applicant herself, the presumed deceased's brother and sister (her son and daughter respectively). There are written responses from the Insurers acknowledging the status of the policies and awaiting the declaration by the Court in proof of death)].

"The Affidavit should generally state: (1) when and in what circumstances the person who has disappeared was last seen or heard of; (2) whether any advertisements have been inserted for

the purpose of ascertaining his whereabouts, and if so, in what newspapers and with what results – [(This was not done here and, given all the known circumstances, would have been an otiose requirement.); (3) the applicant's belief that the alleged deceased is dead – [(a requirement which Ms. Boxx sadly had to and did meet in this case): Re Hurlston [1898] P. 237; Re Walker [1909] P. 115; (4) whether any [communications] have been received from him: Re Clarke [1896] P. 287 – [(again, an irrelevant consideration here)]; (5) whether he left any will or died intestate – [(a requirement addressed in paragraph 18 of Ms. Boxx's affidavit)]; (7) details of any real estate left and who is the heir at law – [(a requirement met by paragraph 15 of Ms. Boxx's affidavit)]; and (8) other particulars of the estate of the presumed deceased (including bank accounts) – [(addressed by paragraphs 12, 16 and 17 of Ms. Boxx's affidavit)]. The judge must be satisfied that all reasonable inquiries have been made: (Re Robertson [1896] P 8.)

13. Here, I am satisfied by the ample affidavit evidence and by the report of the RCIPS, that all reasonable inquiries have been made into the unfortunate incident that led to the loss at sea of the presumed deceased.

14. The application for the order for leave to swear death is accordingly granted


Hon. Anthony Smellie
Chief Justice



July 7 2011