

IN THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim Number: SLUHCV2023/0407

In the matter of an application to appoint
a curator to the person and property of
FLEUR BYRON COX also known as
FLEUR ODLUM

-and-

In the matter of Articles 285 to et seq of
the Civil Code of Saint Lucia, Chapter 242
of the Revised Laws of Saint Lucia, 1957.

BETWEEN:

VINCENT ADRIAN AUGIER

Petitioner / Applicant

-and –

FLEUR BYRON COX also known as
FLEUR ODLUM

Respondent

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mrs. Cynthia Hinkson – Ouhla for the Petitioner/ Applicant.

2024: April 22

REASONS

[1] **PARIAGSINGH J:** On April 12, 2024, I dismissed an application for curatorship filed on October 23, 2023, and a petition for curatorship filed on February 06, 2024. On April 15, 2024, I dismissed an application for an extension of time to comply with a previous order of this court made on January 30, 2024. The applications and petition (referred to collectively as “the applications”) were dealt with *ex parte*, and on paper, and were all dismissed with no orders as to costs.

- [2] Notice of my orders was served on the legal practitioner for the Applicant, Mrs Cynthia Hinkson-Oula, via email on April 15, 2024, at 2:53 pm. Mrs Hinkson-Oula was, however, dissatisfied with my orders. On that basis, she emailed my case manager on April 18, 2024, requesting that three pieces of material be brought to my attention. This course of action was taken, instead of counsel making an application, on her client's behalf, to appeal the orders or apply to set them aside. The email stated:

"Dear Mrs. Aroudel Anthony,

I acknowledge receipt of your email. I would be grateful if you could bring the following attachments to the Attention of Justice Singh Part 5A.6 (1) of the Civil Procedure Rules Revised Edition 2024 Trinidad and Tobago judgment HCA No. 678 of 1999 CHITREKHA ADELLA GAFFAR V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Court of Appeal Order dated 2nd April 2024

Kind regards,

Cynthia Hinkson-Ouhla".

- [3] These are the reasons for my refusal of the applications in order to address the request by counsel for further material to be brought to my attention, after having been given notice of the orders made on the applications.
- [4] The background to the applications and my disposal of them is set out below.

Background and reasons for disposal of applications

- [5] An Application for curatorship filed on October 23, 2023, was first considered by this Court on January 30, 2024, on paper. In an order made on the same day, I did not grant the application. Instead, I identified two categories of concerns I had. The first was procedural, and the second was substantive. On the procedural issues, I outlined to Counsel that applications for curatorship are not brought by application. They are brought by petition. Additionally, I brought to counsel's attention that the presentation of the affidavit in support made is difficult to read and was not in compliance with the rules.

Lest the Court has to point counsel to where these positions can be found, I recited them in the order. They are Article 285 of the Civil Code of Saint Lucia and CPR rule 3.6.

- [6] On the substantive issue, I indicated to Counsel that I was not satisfied on the evidence that the application ought to be granted, in any event. This was because I was of the view that the evidence was inadequate. I could not conclude from the evidence presented that the Applicant was the best person to be appointed curator for the person and property of the respondent. There were other issues, and I articulated them as follows:

“AND UPON THE COURT BEING OF THE VIEW that it is not satisfied that the Applicant, who deposes that he is a ‘close family friend’ of the Respondent, is the only or best person to take charge of her affairs if a curator is to be appointed for her. Apart from the procedural flaws identified above, the evidence filed in support of the application is lacking, as there is no evidence of the respondent’s marital status; whether she has any children other than the four mentioned in the affidavits in support, one of whom is a special needs child; the Applicant’s age; his marital status; his place of residence; how he intends to care for the Respondent; his financial means; whether he is of good character; the current financial position of the Respondent or her expenses; and the acts of unsoundness alleged by the Respondent.”

- [7] Despite the procedural deficiencies and the adequacy of the evidence, given the nature of the application in the interest of fairness and justice, I did not dismiss the application. Instead, I made an order permitting the Applicant the opportunity to correct these errors by filing a petition and a supplemental affidavit. The order was worded as follows:

“IT IS HEREBY ORDERED that:

- [1] Unless a Petition for Curatorship and a supplemental affidavit addressing the deficiencies identified above are filed on or before February 06, 2024, the application stands dismissed with no order for costs without further order;
- [2] If there is compliance, the Petition and all documents filed in this matter are to be personally served on the Respondent and her children, except Charlene Odlum, and the petition is to be immediately set down for hearing by the Court Office.”

- [8] The applicant's legal practitioner was deemed served with this order on the same day it was made (January 30, 2024) at 1:14 pm via the e-litigation portal. On February 6, 2024, the applicant filed two documents. The first was a petition for curatorship, and the second was a supplemental affidavit.
- [9] The petition was substantially compliant with my previous order. Save that it still did not address who the applicant was to the respondent and why he was best placed and, more particularly, better placed than her children to take care of her and her affairs. Additionally, the petition was not signed by the petitioner and contained editorial tracked changes. It contained statements that the respondent's children were served; however, there was, then, and remains, now, no affidavit of service filed. Likewise, there were statements about the consent of the respondent's children; however, no evidence of their consent was attached to the petition, filed separately, or exhibited to the affidavit filed in support. Altogether, the application could not, in my view, be granted on the petition without an amendment having to be effected.
- [10] Of greater challenge to the applicant was the affidavit filed on February 06, 2024. There were myriad errors, quite embarrassing to commit to paper but necessary in the interest of providing a proper explanation. There was still no evidence of who the Applicant/Petitioner is to the Respondent. There was still no evidence of the relationship between the Petitioner and the Respondent. The supplemental affidavit filed on February 06, 2024, was incomplete as what was filed was a draft. The supplemental affidavit:
- i. containing highlights in yellow comments in the column by someone;
 - ii. showing track changes;
 - iii. was not signed by the deponent;
 - iv. was not commissioned by a legal functionary capable of taking oaths;
 - and
 - v. the exhibits referred to are not annexed and were not filed.

[11] The following day, on February 07, 2024, the same affidavit, in draft, with the exact, same, errors was refiled. On April 10, 2024, the legal practitioner filed an application for an extension of time to comply with the order of January 30, 2024. Like the first three attempts, the fourth also had errors. In addition to the previous application and petition for curatorship having been dismissed, none of the exhibits referred to in the application were exhibited.

[12] By an order of the same day, I exercised my discretion under CPR rule 11.15 (1)(a) and (b) and struck out the application with no order as to costs.

The email request by counsel

[13] In the absence of an application to the court, Mrs Hinkson-Oula's email appears to seek reconsideration of my orders on the basis of the three pieces of additional material she referred to:

- a. a copy of Rule 5A.6(1) of the Civil Procedure Rules (Revised Edition) 2023 (CPR) wrongly referred to as 'Civil Procedure Rules Revised Edition 20204' by counsel;
- b. the judgment of Ventour J in the High Court of Trinidad and Tobago, in the matter of **Gaffar v Attorney General of Trinidad and Tobago**, HCA 678 of 1999 (unreported); and
- c. the order of Michel CJ (Ag.) made on April 02, 2024.

[14] I consider this approach to be highly inappropriate. If counsel has an application to make, she should make it in accordance with the rules. More so, counsel ought to remind herself of the options available to her, the applications having been dismissed.

[15] In any event, having considered the material submitted, even in the absence of an application to set aside my orders, I am of the view that the additional material takes the applicant no further for reasons which are set out below.

Rule 5A.6(1) CPR:

[16] Subrule (1) of rule 5A.6 provides that once a document is submitted, an electronic image of the original or the physical signature is required. This takes the Applicant no further. The problems with the Applicant's approach were incomplete documents, filing draft documents, and filing documents not signed at all either physically or electronically.

[17] Subrule (2) speaks to the insertion of an electronic signature. There is no signature on the affidavit of February 06, 2024, which I rejected for that reason, in addition to it being a draft document containing editorial comments and showing track changes. This sub-rule does not assist the Applicant.

[18] Subrule (3) speaks to having the original being available for inspection. With the greatest of respect to counsel, I do not believe that it is the Court's function to double-check and ensure that documents filed by any lawyer are not in draft or do not contain markings, showing track changes. I have no need to see the original documents – they would take the matter no further. Counsel had to ensure that she filed a full and proper document. This rule does not assist her.

Order of Michel CJ (Ag.) made on April 02, 2024:

[19] For the first time, through counsel's email to my case manager, the Court has been provided with a full copy of the order of Michel CJ (Ag.). This order relates to an application for an extension of time in an appeal in which the Respondent to this application is the Appellant. The order grants the applicant a third extension of time to obtain the order sought. I am unaware that the order made on January 30, 2024 was brought to that Court's attention or that there had already been non-compliance with an 'unless' order by the time the order of April 02, 2024, was made. I also fail to see how this order assists the applicant in this matter.

[20] If anything, this order grants the applicant three (3) months to obtain the order now sought. This supports this Court's view that the applicant has sufficient opportunity to file a proper application.

Decision of Ventour J made in Gaffar v Attorney General, HCA 678 or 1999 (T&T Unreported)

[21] This authority does not assist the applicant for the following reasons:

- a. it is not binding on this Court;
- b. this was a pre-CPR case, and the general disposition and philosophy of the Court to procedural and other breaches are stricter under the CPR; and
- c. this was a constitutional case where the judge dealt with an error in procedure viz-a-viz commencing proceedings under the Constitution as opposed to an ordinary tortious action.

Conclusion

[22] It is for the reasons explained above that I dismissed all applications made by the applicant.

[23] With respect to email material to my case manager for my attention, counsel really ought to know better. Suffice it to say that this is a court of record. If something is to be advanced or brought to the attention of the court, it ought to be filed. If counsel felt it best to make a further application in this claim, which has already been dismissed, a formal application ought to be made and not engagement by email.

[24] In this regard, any further consideration of this application will only occur upon filing of a formal application.

**Alvin Pariagsingh
Judge**

By the Court


Dp. Registrar

