

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT OF APPEAL NO 40/2009

APPLICATION NO 113/2010

**BEFORE: THE HON. MR JUSTICE PANTON P  
THE HON. MR JUSTICE HARRISON JA  
THE HON. MR JUSTICE MORRISON JA**

<b>BETWEEN</b>	<b>WILBERT CHRISTOPHER</b>	<b>APPLICANT</b>
<b>AND</b>	<b>PATRICK FLETCHER</b>	<b>RESPONDENT</b>

**Applicant in person**

**Debayo Adedipe for the respondent**

**9 November 2010 and 27 May 2011**

**PANTON P**

[1] This application is for an order to discharge an order made by Harris JA on 16 June 2010. Before the learned judge of appeal was an application by the applicant for an order to obtain a certified copy of the marriage record of his late father Leslie Christopher and his widow, Sarah Christopher. In refusing the application, Harris JA ruled that it was misconceived. She said that any interlocutory application “must flow from the appeal itself” and that the instant one did not.

[2] There is an appeal that is pending in respect of a claim by the applicant that the respondent as executor of the estate of the applicant's father had failed to administer the estate thereby resulting in the beneficiaries being deprived of their inheritance. The applicant, who is recorded as having admitted to Donald McIntosh J at the hearing that he was in possession of the original will, wished for the court to remove the respondent as executor and to appoint him, the applicant, instead. Donald McIntosh J dismissed the claim but granted leave to appeal.

[3] In making the application before the single judge of appeal, the applicant stated in his "grounds" for the application that "the signature of the late Mr Leslie Christopher can be used to verify if the signature matches that of what is signed on his Will and Testament dated the 26.12.94". The applicant also stated in his grounds that in July 2009 he "had visited Mrs Sarah Christopher wife of the appellant father and asked for a copy of her marriage record, she refused and said that it is her private document". He also stated that he had visited the office of the Registrar General and had paid for the marriage record but upon receiving it he had noticed that the signature of his deceased father was missing.

[4] In his oral presentation before us, the applicant reiterated that his application was for "an order that the Registrar General's Department release the certified copy of (his) father's marriage certificate". On this occasion, he

stated that the marriage was between his father and Selena Palmer and that it took place in 1981. It was not stated whether Selena Palmer is the same Mrs Sarah Christopher referred to in the application and grounds. The applicant said that this was "in an effort to compare the signature on the certificate with that on the will as my father's signature was forged". The Registrar General's Department, according to the applicant, requires a court order to release the record of marriage with the signature of the deceased testator. He confirmed that no application had been made to the Supreme Court for the Registrar General to produce the certificate.

[5] Mr Adedipe, for the respondent, informed the court that his understanding was that the claim involving the instant parties was one in which the applicant wished to be named as executor in place of the respondent. The claim, he said, had nothing to do with forgery. In his view, the single judge of appeal was being asked to exercise original jurisdiction in respect of a claim against the Registrar General's Department. If a proper application is made to that department and it were to be denied, his view was that the applicant may then consider applying for judicial review of the decision.

[6] It seems obvious to me that the purpose of the application before Harris JA was to fish for evidence to be used in the applicant's quest to show that his father's will was forged. The question is whether these proceedings involving these parties can be used for such purpose.

[7] The grounds of appeal that have been filed against the order of Donald McIntosh J all speak of the failure of the learned judge to admit certain documents in evidence. The production of a certified copy of the marriage record was not an issue at the hearing of the matter before the learned judge. The respondent has absolutely nothing to do with the obtaining of a certified copy of a marriage record from the Registrar General. There is therefore no basis for him to be made a respondent in any proceedings for the obtaining of such a record. That is strictly a matter between the applicant and the Registrar General.

[8] I am of the view that Harris JA was quite correct in saying that the application was misconceived. In the circumstances, I would dismiss this application and order the applicant to pay the respondent's costs, such costs to be agreed or taxed.

## **HARRISON JA**

[9] I have read in draft the judgment of my brother Panton P and agree with his reasoning and the conclusion arrived at. There is nothing I wish to add.

**MORRISON JA**

[10] I too have read the judgment of my brother Panton P and agree with his reasoning and conclusion.

**ORDER**

**PANTON P**

Application dismissed. Costs to the respondent to be agreed or taxed.