



COURT OF APPEAL
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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR JUDGMENT**

APPLICATION NO COA2023APP00171

BETWEEN	ICYLIN WILLIAMS	APPLICANT
	(Sole surviving executrix named in the Last Will and Testament of Leopold Williams, deceased)	
AND	PHYLLIS WILLIAMS	RESPONDENT
	(One of the beneficiaries under the Last Will and Testament of Leopold Williams, deceased)	

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Mr Justice F Williams JA and the Hon Mrs Justice Dunbar-Green JA on 30 June 2025 with Mr Omar Oliphant instructed by ZDO Law for the applicant and Mr George Traille and Mrs Dianne Phillip Traille instructed by Phillip Traille and Company for the respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons for the decision delivered orally in open court on 30 June 2025 by the Hon Mrs Justice McDonald-Bishop P is as follows:

[1] This is a relisted notice of application filed on 23 January 2025 for leave to appeal the decision of Lindo J ('the learned judge') made in the Supreme Court on 16 June 2023.

[2] The proceedings in the court below were commenced by a fixed date claim form filed by the respondent, Phyllis Williams, who is one of the beneficiaries of the estate of

Leopold Williams, deceased ('the deceased'), the respondent's father. The claim was against the applicant, Icylin Williams, the deceased's widow, in her capacity as the executrix of the deceased's estate.

[3] The claim concerned the distribution of and entitlement to assets purportedly forming part of the deceased's estate. The claim sought two broad categories of orders: (1) an order directing the applicant to take steps to have the deceased's last will and testament admitted to probate; and (2) declarations and orders that money held in a bank account jointly owned by the applicant and the deceased ('the joint account') were part of the deceased's estate and should be held on trust for the beneficiaries of the deceased's estate.

[4] After the fixed date claim form was filed, the applicant filed a notice of application seeking to have the claim struck out and to obtain declarations that she was solely entitled to the money in the joint account and to the home in which she lived with the deceased during his lifetime.

[5] The fixed date claim form and the notice of application were fixed for hearing together by order of the learned judge made on 16 March 2022.

[6] On 16 June 2023, the matter came before the learned judge. This court has not received a copy of the learned judge's perfected formal order but was provided with the signed minute of order. The fixed date claim form is not mentioned in the minute of order. The minute of order instead reveals that the learned judge largely dismissed the orders sought on the notice of application and made orders that (1) the applicant is to proceed with an application for probate of the deceased's last will and testament; (2) the applicant is the sole executor of the deceased's estate and is authorised to conduct the affairs of the estate; (3) the deceased's estate, and not the applicant alone, is entitled to the money in the joint bank account; and (4) the deceased's family home is a part of the deceased's estate. The learned judge made no order as to costs and refused leave to appeal on the basis that the "application for leave [is] not necessary".

[7] The applicant, who was evidently dissatisfied with the learned judge's decision applied to this court for leave to appeal. Having considered the fixed date claim form, the applicant's notice of application in the court below, and the learned judge's orders, along with all the other documents and material placed before this court, we are compelled to conclude that the application for leave to appeal should be dismissed for three reasons.

[8] Firstly, we agree with the learned judge that leave was not required to appeal her orders. Although the minute of order makes no mention of the fixed date claim form, we are satisfied that the fixed date claim form and the notice of application were heard together, and that the learned judge's orders entirely resolve the dispute arising between the parties on the fixed date claim form and the applicant's notice of application. Therefore, the hearing conducted before the learned judge was a final hearing of the claim, and her decision on 16 June 2023 was a final resolution of all the issues between the parties in the proceedings. The learned judge's decision was therefore a final judgment or order for the purposes of section 11 of the Judicature (Appellate Jurisdiction) Act (see **Jamaica Public Service Company Limited v Rose Marie Samuels** [2010] JMCA App 23). This means, in effect, that the applicant was not required to seek leave to appeal but was rather entitled to file a notice of appeal within 42 days of the learned judge's judgment (see rule 1.11(1)(c) of Court of Appeal Rules 2002 ('CAR')).

[9] Secondly, and in any event, even if leave to appeal were required, it could not be granted because the application is out of time. The notice of application for leave to appeal was originally filed on 21 July 2023. This was outside the 14-day period specified in rule 1.8(1) of the CAR for making such an application, and the applicant has neither sought nor obtained an extension of time.

[10] It follows from the preceding conclusions that the relisted notice of application for leave to appeal must be dismissed as being unnecessary, and, in any event, out of time.

[11] Lastly, the court also notes, with great concern, the indication by counsel for the applicant in the skeleton arguments supporting the application that the applicant is now

deceased. The death of the applicant means there is no longer an applicant for the proceedings to be brought or pursued before this court. Therefore, even if the application for leave to appeal were necessary and filed within time, it could not have proceeded given the applicant's death. For any proceedings to be pursued in this court, a suitable representative would have had to be appointed by court order in substitution for the applicant.

[12] For all these reasons, the application for leave to appeal cannot stand.

[13] Accordingly, the court makes the following orders:

1. The relisted notice of application for leave to appeal filed on 23 January 2025 is dismissed.
2. Costs to the respondent to be agreed or taxed.