IN THE COURT OF APPEAL OF BELIZE, A.D. 2003

CIVIL APPEAL NO. 15 OF 2003

MARTHA RENEAU
(executrix Estate Maurice Bladden deceased) **APPELLANT**

v.

ANN ELIZABETH WILLIAMS **RESPONDENT**

—

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**

Mr. Orlando Fernandez for appellant.
Mr. Michel Chebat for respondent.

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10th March & 18 June 2004.

CAREY JA

1. The respondent, one of three daughters of Herbert Leopold Williams (deceased), took out a writ on 4 December 2000 against Maurice and Wayne Bladden claiming to recover possession of "premises situate at 12 Haulover Road, Belize City, injunction, damages and costs." The statement of claim was not lodged until 1

July 2002 and thereafter was substituted on 29 May 2003 by an amended statement of claim. Although it was pleaded that the defendants came on the land with the permission of Herbert Leopold Williams, inconsistently there was a claim for damages for trespass. Moreover, Herbert Leopold Williams died intestate 17 June 1985 and letters of administration were granted to the respondent in her representative capacity on 19 June 1992. But the action was not brought in that capacity as it should.

2. Thus it failed to comply with Order iv R. 5 which mandates -

> "If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity. The indorsement shall show in manner appearing by such of the Forms in App. A. Pt. III. Sect vi., as shall be applicable to the case or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued."

3. During the hearing in the court below, counsel for the respondent raised this procedural question to which the response given, was that the right of recovery accrued only upon the grant of administration which would suggest to me that the action was not properly founded. Curiously, the judge who gave a reserved

judgment, failed to address or adjudicate on this issue and proceeded to give judgment on behalf of the respondent for recovery of possession and also for damages for trespass to be assessed. The appeal is against that judgment.

4. The first ground of appeal related to the procedural question while the second was that the decision could not be supported having regard to the evidence. Mr. Fernandez for the appellant in arguing the first ground pointed out that by virtue of the Interpretation Act "shall" must be construed as imperative. The respondent as the evidence showed, should have sued in a representative capacity. He pointed to a Certificate of Title issued to her as administratrix of the estate of Herbert Leopold Williams (deceased). He cited **Bowler v. John Mowlem & Co Ltd** [1954] 3 All E. R 556; **Waterman & Anor v. Waterman** (1977) 30 W.I.R. 32. Mr. Chebat for the respondent had no effective response and cited **Noel v. Noel** (1959) 1 WIR 300 in which the respondent sued in his personal capacity and the case was contested throughout on that basis but the judge gave judgment in his representative capacity. The Federal Supreme Court thought that the action ought to have been commenced in the name of the respondent as administrator but that not having been done and the case not having been conducted on the footing of a representative action, no amendment of the title of the action would now suffice. That case, does not

support the respondent's argument that this court should grant an amendment at this stage of the proceedings. In the instant case, the action was filed by the respondent in her personal capacity, evidence was led in a representative capacity and judgment entered in a personal capacity. This cannot be justified in law as the respondent in her personal capacity had no locus standi to maintain the action. As such, she was neither a person in possession nor had she a right to possession nor was she the owner in fee simple. It is worth noting that although the issue was raised by the appellant no application to amend was made and the judge did not consider it as of any moment.

5. In my opinion, that is sufficient to dispose of this case. It was for these reasons that I agreed with my brothers that the action could not succeed and that the judgment below should be set aside and judgment entered for the appellant with costs both here and below.

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CAREY JA

I concur.

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MOTTLEY P

SOSA JA

On 10 March 2004 I agreed that the appeal should be allowed; that the judgment of the court below should be set aside; that judgment should be entered for the appellant/defendant; and that the appellant/defendant should have his costs, to be taxed if not agreed, here and in the court below. I concur in the reasons for judgment of Carey JA, which I have read in draft.

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SOSA JA