IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 835 OF 2019

IN THE MATTER OF THE ESTATE OF NORMAN HUSLSE, deceased

AND

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT, CAP. 197 OF THE LAWS OF BELIZE

BETWEEN

ELSIE HULSE	**FIRST CLAIMANT**
SELINA HULSE a.k.a. CELENA HULSE	**SECOND CLAIMANT**

AND

HUGH HULSE	**FIRST DEFENDANT**
WILFRED P. ELRINGTON	**SECOND DEFENDANT**

(Executors and Trustees of the Estate of Norman Hulse)

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

8th September 2022

Appearances:

Mrs. Melissa Balderamos Mahler, Counsel for the Claimants.

Mr. Mark Williams, Counsel for the Defendants.

KEYWORDS: Probate - Administration of Estate - Ademption - Breach of Fiduciary Duty - Breach of Trust - Breach of Statutory Duty - Failure to file Full and True Accounts - Failure to Keep Beneficiaries Properly Informed - Failure to Efficiently Administer Estate

JUDGMENT

1. Elsie and Selina or Celena Hulse are sisters and the daughters of the now deceased testator, Norman Hulse. When Norman died, they were both minors, Elsie was only five. They said in 2019 when they were both adults, they discovered for the first time that their father had executed a Will (the Will) which left them a significant portion of his Estate (real and personal property).

2. The Will also name Hugh Hulse (their brother) and Wilfred Elrington as his executors (the Executors). The Claimants also learnt that the Executors had received a grant of probate on the 1st August 2003 and had filed an inventory containing a number of assets.

3. The Claimants have instituted this Claim as they say they had never been informed of the existence of the Will. They have not received what had been bequeathed to them and no proper accounting had been made by the Executors as required by law.

4. They ask the Court to find that the Executors have breached their duty as trustees as well as their statutory duty and ought now to be compelled to render a proper account and to administer the Estate in accordance with the Will.

5. In their Defence, the Executors say they have always acted in strict compliance with their statutory duty save that they failed to file the affidavit and Statement of Account within the stipulated time. Moreover, it was always their intention to make provision for the Claimants from the Estate by way of settlement of this Claim.

6. They pleaded that they had made various contributions to the maintenance of the Claimants throughout the years, but they simply could not administer the real property in accordance with the terms of the Will.

7. The deceased had died seised of leasehold property in King's Park. He was also the legal owner of property on Baymen Avenue. Prior to his death, however, he had entered into agreements for the sale of both properties.

8. All proceeds of those sales have not yet been collected by the Executors as there was a competing claim of ownership of these properties before the court. This was filed by the wife of the deceased in 2003.

9. There was also a leasehold property owned by the deceased on the Northern Highway with a number of buildings on it. That lease has since expired. The deceased's wife had also made a claim for this property as well.

10. The Executors say that because this claim existed, it was impossible for them to fully administer the Estate as they ought or to file the requisite account particularly since the deceased wife had sought orders that the properties be transferred to her. That Claim was discontinued in July 2021.

11. Finally, although the Will speaks to money in certain institutions and a share in a partnership business, at the time of the passing of the deceased there was no money in those institutions and the jointly owned business passed to the surviving partner - the First Defendant solely and so formed no part of the Estate.

The Issues:

1. Whether the Defendants have rendered a true and full account of the Administration of the Estate of Norman Hulse?
2. Whether the Defendants have breached their statutory and fiduciary duties as executors of the Estate of Norman Hulse?
3. What share or interest in the Estate of Norman Hulse are the Claimants now entitled to receive?

Whether the Defendants have rendered a true and full account of the administration of the estate of Norman Hulse:

12. The Defendants admit that they did not file their accounts as they were mandated to do in accordance with Section 49 of the **Administration of Estates Act**. They did not apply for or receive an extension of time from the Registrar either.

13. After this Claim was filed, an Interim Order was made directing the filing of those accounts. On the 5th March 2020 and 21st May 2020, affidavits and Statements of Accounts were filed by the Defendants.

14. The Claimants challenged the accuracy of those accounts and determined them to be deficient and unsupported or unverified in many areas. The Claimants opined that an inquiry should be ordered as to the true status of the Estate with a full accounting of its assets.

15. In their submissions only, the Defendants sought to rely on the doctrine of ademption in relation to the Highway Property, King's Park Property, and proceeds of the Testator's account held at the St. John's Credit Union.

The Court's Consideration:

16. **The Pertinent Terms of the Will:**

> *" I appoint my son HUGH HULSE and my Attorney-at-law WILFRED P. ELRINGTIN to be the Executors of this my Will.*
>
> *I DEVISE my house at mile 2 ½ Northern Highway, Belize City, Belize which houses Hulse Auto Parts and the land on which it stands to my Trustees IN TRUST for my two children namely ELSIE HULSE and CELENA HULSE in fee simple as tenants in common.*
>
> *I DEVISE my house at mile 2 ½ miles Northern Highway, Belize City which houses the Cozy Corner Restaurant to my wife ANN MARIE HULSE nee MOGUEL in fee simple absolutely.*
>
> *I GIVE fifty percent of the purchase price of my property on Baymen Avenue which I am selling to Oscar Armando Nunez and which is more particularly described as Lot No. 5279 as shown and described on Plan No. 119 of 1972 to my said children ELSIE HULSE and CELENA HULSE in equal shares and the remaining fifty percent to my said wife ANN MARIE HULSE.*
>
> *I GIVE to my said children ELSIE HULSE and CELENA HULSE my one half interest in the Partnership names Hulse Used Auto Parts.*
>
> *I GIVE all the monies standing in my name and to my credit at St. John's Credit Union and the Bank of Nova Scotia to my said children ELSIE HULSE and CELENA HULSE in equal shares absolutely.*
>
> *I GIVE the Residue of my estate both real and personal whatsoever and wheresoever situate including Block 45, Parcel 997/1 in the King's Park Registration Section to my children namely NORMAN HULSE JR., MARK HULSE, WAYNE HULSE, RALPH HULSE and DEBBIE AYUSO HULSE in equal shares absolutely."*

17. Section 4 of the **Administration of Estates Act Cap 197** (the Act) reads:

> *(1) All real estate and personal estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as real estate and personal estate at the commencement of this Act devolved in Belize on the personal representative of the deceased.*
> *(2) The personal representatives for the time being of a deceased person are deemed in law assigns within the meaning of all trusts and powers.*
> *(3) The personal representatives shall be the representatives of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.*

18. This means that all interest in both real and personal estates which did not cease on the death of the deceased devolved on his personal representative. These include chattels, real or leasehold interests, as well as land in possession.

19. The Court reminds the Executors that subject to Section 34 of the Act, a personal representative has a duty to collect and get in both the real and personal estate of the deceased. This section also directs that all of the deceased's property is to be held on a trust for sale.

20. However, subsection (7) of Section 34 provides that "*where the deceased leaves a will, this section has effect subject to the provisions contained in the will, and the trust for sale shall extend only so far as it is necessary to raise money for the payment of the funeral, testamentary and administration expenses and the debts and other liabilities of the deceased."* Undoubtedly, the Executors are duty bound to pay the debts of the Estate.

21. Every executor is also bound to administer and distribute the Estate according to law and the provisions of any valid Will relating to that Estate (Section 49). Section 49(1) also mandates the filing in the Registry of a full and true account of the administration and distribution of the Estate. This account must be verified by affidavit and supported by vouchers.

22. The filing is to be done within twelve (12) months from the day on which probate is issued unless the Registrar grants an extension. For such an extension, an application must be made, and sufficient cause must be shown to the Registrar's satisfaction.

23. Although the Claimants, by letter, requested the filing of the accounts in accordance with Section 50(1)(a), the Defendants did not avail themselves of the procedure to extend time under Section 49. Rather, the Claimants were forced to seek the Court's intervention. This does not bode well for the Executors at all.

24. Having been called upon by the Court to show cause why the accounts have not been filed pursuant to Section 50, the reason the Defendants proffered is certainly not sufficient since the Act also allows for the filing of interim accounts each year. Section 49(2) and (3) read:

> *(2) If the account is not the final account it shall set forth all debts due to the estate still outstanding and all property, goods and effects, still unsold and unrealised, and the reason why they have not been collected, sold or realised, as the case may be.*
> *(3) The executor or administrator shall, every twelve months after the filing of the first account, render further accounts of his administration and distribution until the estate is fully administered, and if he fails to do so, shall be liable to be dealt with in accordance with section 50.*

25. The Defendants could have, but also failed to avail themselves of this procedure and there are consequences. The Court finds that they have breached their statutory duty to file accounts within the prescribed time. Section 49(9) makes it clear that where accounts have not been filed within the time prescribed, the executor shall not be entitled to the *"costs and expenses of and attendant on the rendering and filing of an account and the forwarding of notices…"*

26. The Defendants are, accordingly, not entitled to any of these costs and expenses from the Estate. They are to be borne personally by the Executors themselves.

27. The Executors have also not sought an extension of time from the Court either. Section 50(2) and (3) gives the Court the power to deny costs where the executors are found to be in default and the Court finds it just and equitable to do so:

> *(2) Notwithstanding that the court may be of opinion that the grounds and reasons filed with the Registrar by an executor or administrator would have warranted the Registrar in granting an extension of time, the executor or administrator may be ordered to pay the costs of the application if in the opinion of the court the conduct of the executor or administrator was such as to render it just and equitable that he should bear the cost of the application.*
> *(3) The costs adjudged to the Registrar or other person aforesaid upon any process sued out by him or on his behalf shall be payable by the executor or administrator in default personally and shall not be charged against the estate, unless the executor or administrator is authorised by the court to do so.*

28. The Court is, accordingly, called upon to scrutinize the conduct of the Executors. In these circumstances, the Court finds the Executor's conduct to be unreasonable and inexcusable. There were minor beneficiaries involved and this adds an extra burden.

29. The Executors must realize that the minors were unable to speak for themselves or to make requests or complaints without someone else's aid. Even in those circumstances, no accounts were filed. When the minors attained the age of majority and beseeched the Executors' assistance, they were met with disrespectful silence.

30. It was not until the Court made its order that the Executors were stirred to action, and even then, much was left to be desired. This is a perfect place to consider what has been offered by way of an inventory and full account.

31. Section 25 of the Act binds the personal representative to *"exhibit on oath in the court, a true and perfect inventory and account of the real and personal estate of the*

deceased, and the court shall have power as heretofore to require personal representatives to bring in inventories."

32. Now, the Executors, as part of their application for the Grant of Probate, filed an inventory dated the 11th June 2003 which reads as follows:

"PERSONAL PROPERTY:

Clothing & other personal effects	*$*	*200.00*
Balance due from purchase on sale of property at Lot: #794 or #35 Baymen Avenue, Belize City	*$*	*134,000.00*
Balance due from purchase on sale of leasehold property at Registration Section: King's Park Block 45 Parcel 997/1	*$*	*75,000.00*
½ share Partnership Capital in Hulse Used Auto Parts	*$*	*64, 883.00*
	$	*274, 083.00*

REAL PROPERTY:

Leasehold property at 1 ½ miles Northern Highway Lots 978A and 978B with 2 ferro-concrete houses and a garage thereon	*$*	*1, 515,000.00*
	$	*1, 789, 083.00*

DEDUCTIONS:

Debt owed to Doony's Albert Street, Belize City	*$*	*595.00*
Debt owed to Lim C. Lo	*$*	*7, 661.10*
Arrears Rent at #85 Amara Avenue, Belize City	*$*	*500.00*
Arrears Property Taxes owed on #5 978, 978A And 978B ½ miles Norther Highway	*$*	*4, 308.00*
Arrears Property Taxes owed on Lot #794 Baymen Avenue	*$*	*2, 354.40*
Funeral expenses	*$*	*7, 000.00*
	$	*22, 418. 50*
	$	*1, 766, 664.50*

DEVOLUTION:

The property of the deceased testator passes in accordance with the will dated 12th September 2000 to Elsie Hulse, Celena Hulse, Ann Marie Hulse nee Moguel, Norman Hulse Jr., Mark Hulse, Wayne Hulse, Ralph Hulse and Debbie Ayuso Hulse absolutely. Ann Marie Hulse nee Moguel is the wife and the others are the children of the deceased respectively. For statement of devolution see Schedule attached.

Date this 11th day of June , 2003"

33. It seems best to separately consider each of the gifts made to the Claimants in the Will.

House and Land at Northern Highway:

34. The Defendants say that notwithstanding that this property appears on the inventory, on conducting a search at the Ministry of Natural Resources, it was discovered that the 25-year leasehold interest had expired on the 17th February 2001. The Testator, having died in September 2001, was no longer seised of this property so it could not have devolved on his Executors.

35. They added that it was not open to them either to make any substitution of that gift. They derived their power solely from the Will and are confined to its four corners. Consequently, that gift had failed or adeemed.

36. They relied on the Canadian case of ***Best v Hendry, 2021 NLCA 43*** where a house bequeathed had been sold within the lifetime of the testator. The executor sought to trace the proceeds into a bank account and to extract for the particular beneficiary that sum in substitution for the precise gift.

37. The Court of Appeal held that the gift had adeemed and the proceeds of the sale was not the gift which the testator had bequeathed and could not be substituted.

38. Paragraph 51-52 reads, *"The doctrine of ademption is well-established, and its application prevents the difficulty involved in substituting other assets within an estate in order to remedy the beneficial loss of an adeemed gift. Substituting gifts of property within an estate invariably contradicts the ordinary and plain meaning of the words in a will by altering the testator's wishes respecting the specific gift which has adeemed as well as the testator's wishes respecting other gifts. Application of the doctrine enables the rest of the estate to remain intact for distribution according to the terms of the will as instructed by the testator.*

The difficulty of substituting other estate assets for specific gifts of property in a will is described as the "second and more compelling reason" for ademption. The reasoning is that it cannot be inferred that the testator would have wanted the named beneficiary to have received some other chattel or a cash sum in lieu thereof if the specific gift is not owned by the testator at death unless the will itself contains words indicating some such intention (Feeney's Canadian Law of Wills, 4th ed. (Toronto: Butterworths, 2000) at 15.2).

Ademption provides certainty in the law of wills. It goes hand in hand with the principle of interpreting a will within its four corners and is in accordance with the "golden rule [of giving] effect to the testator's intention as ascertained from the language which the testator has used."(Cowper-Smith, at para. 76)."

39. At paragraph 68, it concludes *"..., when Ms. Penney died, there was nothing in her estate of the nature and character, or matching the description, of her specific bequest to Ms. Hendry. The situation admits of no other conclusion but that Ms. Penney's bequest to Ms. Hendry adeemed."*

40. ***Colleton v Garth (1833) Ch 20***, which was also commended by the Defendants, concerned the testator's gift of a specific house to his wife. However, the lease for that house had expired during the lifetime of the testator and he had taken another house. The gift of the house was found to have adeemed.

41. The Claimants countered that ademption had never been pleaded and the Defendants could not now seek to rely on it. They also sought to distinguish ***Colleton (ibid)*** in two ways. Firstly, it dealt with the lease of a house and not the lease of house and land as in the instant case. Further, the testator in ***Colleton*** had moved elsewhere, whereas even though the lease may have expired, the deceased, in the case at bar, continued in possession of the land and had constructed buildings on it which he also occupied up to the time of his death.

42. This Court finds great merit in the Claimant's argument. Ademption had never been raised so the Claimants could not have been expected to put any evidence in rebuttal before the Court. Although in his oral submissions Counsel for the Defendants stated that the issue only emerged from Elsie Hulse's witness statement, he was clearly mistaken.

43. Wilfred Elrington's witness statement was filed on the 30th June 2021 while Elsie Hulse's was filed on the 1st July 2021. In Mr. Elrington's witness statement at paragraph 5, he speaks of making his own investigation at the Ministry of Natural Resources which revealed the expiry date of the lease.

44. Conveniently, he does not give a date of the investigation or finding. This is well noted by the Court. Nonetheless, Mr. Elrington clearly knew when the lease had expired before Ms. Hulse's witness statement had been filed.

45. In any event, it seems fairly bizarre if not reckless that these Executors would have listed property on the inventory valued at $1,515,000.00 (the bulk of the Estate). Then purportedly paid in 2004, attorney's fees of $53,672.49 for *"obtaining a grant of probate in Estate valued at $1,789,083.00."* All done without first ascertaining that that particular property actually formed part of the Estate.

46. In fact, not knowing seems to be a breach of duty in and of itself. An executor is duty-bound to use due diligence and fidelity in administering the Estate (Section 53(3) of the Act). He is also to act in the best interest of the Estate. This includes ensuring that the property stated as being owned by the testator was in fact owned by the testator before exorbitant fees are paid.

47. Furthermore, the evidence from the Defendants themselves was that up to the time of the Testator's death, he occupied and was in possession of the property. While Mr. Elrington feigned ignorance under cross-examination, it was that address which he placed or instructed to be placed as the deceased on the application for the Grant of Probate and in the Answers to Objections to Statement of Account dated the 21st May 2020.

44. This must mean that the Testator had been holding over either as a tenant at will or a tenant at sufferance. The Defendants provided no evidence whatsoever to prove whether or not he had continued to pay rent up until his death or if they attempted to tender rent or any arrears when they became executors.

45. What is even far more concerning is that the deceased had applied to purchase the property in October 1997 (during the currency of the lease). Section 14 (1) of the **National Lands Act Cap 191** provides that:

"Whenever the purchaser of any national land encumbers or disposes of his interest or purports to do so or dies intestate before completion of the sale, the Minister may, if he thinks fit, complete the sale by issuing a fiat for a grant of the same land to the person whom the Minister considers to have the best claim thereto."

46. According to Section 45(1) of the Act, an executor, as a trustee for sale during the minority of any beneficiary, has:

(a) the same powers and discretions, including power to raise money by mortgage or charge, whether or not by deposit of documents, as a personal representative had before the commencement of this Act, with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage; and

(b) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale, including power to overreach equitable interests and power as if the same affected the proceeds of sale; and

(c) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

47. Yet, the Executors did not attempt to purchase the property but allowed the offer to expire in January 2016. Rent continues to accrue in the name of the deceased, but no attempt has been made by the Executors to have a renewed lease issued in their names.

48. Moreover, the First Defendant Executor and others now occupy various parts of that property. The land taxes continue to accrue in the deceased's name which is *prima facie* evidence that there has been no change of ownership. So too, the land rent statement remains in the deceased's name, and which shows in January 2021 a directive to immediately pay the balance due and owing.

49. The Executors say that the property did not form part of the Testator's Estate. However, they certainly carried on as if it did. They say they incurred expenses to fill the property, pay property taxes, and waste removal charges.

50. They maintained a prolonged action joined with the Testator's wife of which the property was the subject matter. They sought to lay blame on that action for their dereliction of duty in filing timeous accounts. It begs the question: Why bother to defend where there was nothing to defend? Ademption would have been a most swift and thorough defence or ground on which to have the Claim struck out entirely.

51. With all that has been said, I find that ademption ought to have been pleaded if the Defendants hoped to rely on it. Furthermore, even if I am wrong, there is insufficient evidence before the Court to ground a successful plea.

52. The Court finds that the Northern Highway property devolved on the Defendants as Executors at the time of the Testator's death. They are under a statutory duty to administer and distribute the Estate according to law and the provisions of the Will. They must, therefore, account for this gift in their Statement of Accounts. Leave is granted to them both to amend the Statement accordingly.

53. In their submissions, the Claimants alluded to the terms of the Will and seemed to touch on the interpretation of certain clauses. This is, however, no part of the Claim now before the Court.

Property at Baymen Avenue:

54. The parties agree that this property had been sold prior to the Testator's death and part of the purchase price had already been paid. Therefore, all that could have come into the Executors' hands would have been the remainder of the purchase price which the purchaser says was $134,000.00 of which $40,000.00 currently remains outstanding.

55. According to the Will, the Claimants are entitled to 50% of this sum. The Executors must account for the entire $134,000.00 in their Statement of Account and administer it in accordance with the law and the terms of the Will. They will be granted leave to amend their Statement accordingly.

Interest in the Partnership:

56. In their Defence in response to the Claimants' allegation concerning Hulse Used Auto Parts, the First Defendant admitted to being in partnership with the deceased up to the time of his death, whereupon he alleged that he then became the sole owner.

57. Noticeably, he does not plead that this was done in accordance with any partnership agreement. The Court would find this difficult if not impossible to believe since the Testator obviously was not of that mind. He sought to deal with his portion under the Will.

58. The First Defendant did not testify, but clearly, he has misunderstood the law in relation to partnerships. The **Partnership Act Cap 259** Section 35 (1) reads:

"Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner."

59. Section 41 continues that:

"On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind-up the business and affairs of the firm."

60. However, Section 38(3) assures that:

The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner retired from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

61. Moreover, in accordance with Section 44:

> *"Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of eight per centum per annum on the amount of his share of the partnership assets."*

62. Section 45 creates a debt of the amount due from the surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partners' share. The Executors would be wise to remember that Section 30 binds the remaining partner(s) to render true accounts and full information of all things affecting the partnership to any deceased partner's legal representatives.

63. The Claimants seem to accept the figure stated in the inventory of the value of the half share being $64,883.00. The Executors must account for this sum in their Statement. Leave is granted to amend the accounts accordingly.

Bank and other Accounts:

64. The Claimants have accepted that there was no account at the St. John's Credit Union and only $50.17 in the Scotia Bank account. The Executors must account for any sums held in this account at the time of the death of the Testator.

The Accounts Filed:

65. The Defendants filed an affidavit signed by the Executor, Hugh Hulse. It did not verify the accounts but simply attached what it referred to as "An account".

None of this is compliant with the statutory requirement of Section 49(1) of the Act. The Claimants' objection to the format is therefore upheld.

66. Because accounts have never been filed before those filed pursuant to the Interim Order in this matter and so much time has elapsed, the Court will order that a full and true inventory and account be filed. The findings of this Court herein must be reflected in that inventory and account.

67. All the assets of the Estate and their value should be listed as at the time of the death of the Testator. The manner in which the Estate has been administered so far must be shown.

68. Each income (including any loans taken) and expenditure must be supported by documentation. The Court is well aware of the length of time which has passed but the Executor's duty to keep proper records is paramount. The original receipts are, therefore, required and where those are unavailable, reason must be given. Placing a document before the Court entitled disbursements without supporting documentation or explanation is wholly unacceptable.

69. The Executors would also be wise to keep Section 50(2) in mind:

"If the account is not the final account it shall set forth all debts due to the estate still outstanding and all property, goods and effects, still unsold and unrealised, and the reason why they have not been collected, sold or realised, as the case may be."

70. The Executors are vigorously reminded of the ancient English case of ***Labouchere v Tupper (1857) 11 Moo. P. C. 198*** which affirms that the personal representative is personally liable for all debts incurred. While he may be indemnified out of the testator's assets, he may also lose the right to indemnity.

71. The Claimants also objected to certain copies of receipts which the Defendants claim were for disbursements made to the Claimants' mother for their maintenance and stepfather for rent. Suffice it to say that subject to the terms of the trust and while the beneficiaries were minors, the trustees have a discretionary power under Section 38 of the **Trustees Act Cap 202** *"to pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance, education or benefit of the beneficiary; …."*

72. The objection can not simply be that the vouchers were unsigned or not properly signed or that the purported recipient had no involvement in the collection of funds from the Estate on their behalf. It must be proven that there was no collection of these funds by their mother or stepfather for the stated purpose.

73. The Claimants' evidence was that their mother did collect funds for their maintenance. This could only have been done by the Executors as part of the administration of the Estate. These disbursements will remain a part of the accounting and the requirement of originals or explained copies remain.

74. The medical and funeral home bills from Mexico have been sufficiently explained and will remain part of the accounts. The requirement for originals or explained copies applies.

75. Finally, the Court admonishes the Executors' delay in administering the Estate but appreciates that the real property had been in contention until very recently.

76. For this reason as well as the maintenance and care sums paid out, the Court can not find that there has been a breach in the duty to administer the Estate with due diligence. However, this is no longer the situation. These beneficiaries are now adults, and the claim has been discontinued. The Executors are now expected to work with the utmost diligence to wind up this Estate.

77. According to the Act, an executor is allowed to be paid for his services 5% on the first $10,000 and 3% on every amount thereafter of the receipts of the Estate. Section 53(3) is drawn to their kind attention:

> *"If any executor or administrator fails to administer any estate with due diligence or fidelity, or to file or render the account of his administration and distribution of the estate in due course of law, and has no lawful and sufficient excuse for his failure, the Registrar may disallow the whole or any portion of the remuneration which he might otherwise have been entitled to receive in respect of his administration of the estate, subject, however, to review by the court."*

DISPOSITION:

It is declared that:

1. The Defendants have without lawful or sufficient excuse, breached their duty to file accounts within the prescribed time.

It is ordered that:

1. Within one month of this Order, the Defendants are to render, furnish, and file with the Registrar a true and full inventory and account of the administration and distribution of the Estate of Norman Hulse, including the real and personal assets of the deceased and any and all assets and income to which the Claimants and all other beneficiaries are entitled to in accordance with Sections 25 and 49 of the **Administration of Estates Act**.

2. The Defendants shall verify the said accounts by an affidavit.
3. The Defendants shall serve a copy of the said accounts on the Claimants.
4. The Defendants are to give every creditor, beneficiary and other persons interested in the estate a notice stating that the verified accounts has been filed with the Registrar and setting out the names and addresses of all persons to whom they intend to forward this notice.
5. The Registrar is to entertain any objections to the inventory or accounts on a date to be fixed by the Registrar.
6. The Registrar shall give notice to the Defendants of any omissions or objections to any items within thirty days of receiving the objections.
7. The Registrar is at liberty to give any other appropriate directions for the just, economical, and expeditious disposal of the taking of the accounts and vouching of same, as ordered herein.
8. The Defendants are not entitled, from the Estate to the costs of preparing the affidavit and attached Account filed herein on the 5th March 2020, any amendments or subsequent accounts filed, including the final account.
9. The Defendants are to call in and distribute the Estate of Norman Hulse in accordance with the Will of the deceased Norman Hulse with due diligence and, in any event, within one (1) year of the date of this Order.
10. Costs to the Claimants on the prescribed basis being $12,500.00 to be paid personally by the Executors.

SONYA YOUNG

SUPREME COURT JUDGE