

IN THE HIGH COURT OF BELIZE  
ACTION NO. 53 OF 2022

BETWEEN

EMILIANA LASTIMOSA SMYRE

APPLICANT

AND

JAY DEAN CROFTON

RESPONDENT

**Appearances:**

Mr. A. Saldivar for the Applicant

Ms. S. Castillo for the Respondent

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2024: December 5  
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**DECISION**

- [1] **Mansoor J:** The applicant filed a summons filed on 31 July 2024 to be appointed a representative in proceedings filed by her mother claiming a share of the property based on her common law relationship with the respondent. The applicant's mother, Emiliana Lastimosa Smyre ("deceased"), died on 5 September 2023. The respondent opposes the application. Counsel for both parties agreed to dispose the matter on written submissions, which were filed on 28 October 2024.
- [2] The applicant states that Emiliana Smyre died at her home at 4 ½ miles Philip Goldson Highway in Belize City. The applicant is the only child of the deceased. She says the deceased left a last will dated 15 November 2022. She says the respondent is her father. The respondent disputes the will. The applicant has been granted a probate dated 16 November 2023 in respect of the deceased's estate. She asserts full knowledge and awareness of the action filed by her mother. The applicant states that the deceased was mentally and physically capable of carrying on her own affairs until the time of her surgery in December 2022.
- [3] The application for representation relates to an action filed by the deceased on 27 December 2022 seeking declarations that she is beneficially entitled to share the properties listed in a schedule to the originating summons. The deceased's application was made under section 148 of the Supreme Court of Judicature Act (Cap 91). In her affidavit in support sworn on 21 December 2022, the deceased states that she was the respondent's common law wife.

- [4] The present summons is also supported by an affidavit by Benito Juarez sworn on 23 October 2024. Juarez states that he knew both the respondent and the claimant for some 21 years, having held the position of general manager of the company run by the respondent and the deceased. He says he witnessed the last wills made by the deceased and by the respondent. The respondent denies making a last will dated 16 January 2020.
- [5] The submits that based on the matters mentioned in his affidavit sworn on the 11 October 2024, the applicant would not fairly conduct the proceedings on behalf of Emiliana Smyre's estate. In his affidavit, the respondent denies that he was the common law spouse of Emiliana Lastimosa Smyre. The deceased, he says, was employed by Crystal Auto Rental in 1993, the company that he incorporated in 1996 and gave 10% of its shares to the deceased on the condition that she would be its financial controller.
- [6] The respondent casts doubt on the validity of the will dated 15 November 2022 upon which the applicant was granted probate for the estate of Emiliana Smyre. He alleges that the deceased's signature on the will was forged and says that the deceased was in Mexico on 21 December 2022 to seek medical attention and that she was not in Belize City on that day as claimed by the applicant. He says that the deceased was in a vegetative state on 12 July 2023 and, therefore, the affidavit of 12 July 2023 given by the deceased was also forged.
- [7] The applicant has obtained a grant of probate from the court to her mother's estate. It is open to the respondent to show at the hearing that he was not in a common law relationship with the deceased or that her signatures on the last will and the affidavit were forged. These are matters to be tested through evidence at the trial. In these circumstances, it is appropriate to grant the orders sought in the applicant's summons.

**ORDER**

- A. The summons filed on 31 July 2024 is allowed.
- B. The matter is to be fixed for case management.
- C. Costs to be assessed unless agreed.

**M. Javed Mansoor**

Judge