



## CARIBBEAN COURT OF JUSTICE

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### **MEDIA RELEASE**

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### **CCJ UPHOLDS THE VALIDITY OF GIFT IN BELIZE ESTATE DISPUTE**

**Port of Spain, Trinidad and Tobago.** On Thursday 11<sup>th</sup> January 2024, the Caribbean Court of Justice (CCJ) delivered its judgment in the consolidated appeals: *Merickston Nicholson v Anna Nicholson and Franziska Nicholson*; *Anna Nicholson v Franziska Nicholson and Merickston Nicholson* [BZCV2023/001 & BZCV2023/002], a decision in the CCJ's Appellate Jurisdiction. The CCJ upheld the majority decision of the Court of Appeal.

The appeal concerned a dispute over land between a mother (Anna), a son (Merickston Jr), and a daughter (Franziska), following the death of their husband and father Merickston Nicholson ('the deceased'). The deceased left a will which appointed his wife Anna as his executrix and made certain gifts to her and their children, including Merickston Jr and Franziska. The deceased gave Franziska 500 acres of land identified as "Parcel 302", as well as 500 of another 1000 acres known as "Parcel 303".

Anna transferred the "Parcel 302" to Franziska but in relation to "Parcel 303", she removed the deceased's name from the title, and vested the entire 1000 acres in herself and Merickston Jr and then later transferred the entire 1000 acres to Merickston Jr. Franziska did not receive the remaining 500 acres in Parcel 303.

In 2018, Franziska commenced proceedings before the High Court for relief against Anna and Merickston Jr to get the 500 acres in Parcel 303 given to her under the will. The trial judge dismissed Franziska's claims and she appealed.

The Court of Appeal, by majority, held that there had been severance of the joint tenancy in respect of Parcel 303. Therefore, the gift of 500 acres to Franziska, was valid. Merickston Jr and Anna appealed to the CCJ.

Authoring the lead judgment and applying a gender sensitive approach, Justice Jamadar (with whom Justices Rajnauth-Lee and Burgess agreed) held that the assessment and judgment of the majority in the Court of Appeal was sustainable. He was of the view that a holistic, practical, and common-sense approach had been adopted by the majority, grounded in a forensic factual analysis that was tested against and corroborated by contemporaneous, relevant, and largely uncontested documentary evidence. There was no good reason for the CCJ to disturb such findings and the conclusion that during the lifetime of the deceased, he and Anna had severed their joint tenancy in Parcel 303. In his opinion, there was no evidence to justify a release by Anna of her interest in the property, in favour of the deceased.

In a separate judgment, Justice Anderson underscored that a joint tenancy may end by severance or release. In his opinion and on the available evidence, there had been a severance of the joint tenancy and it was entirely plausible to say that the equitable joint interest held by Anna had been released in favour of the deceased prior to the execution of the deceased's will. Justice Anderson concluded that the gift to Franziska in Parcel 303 was effective.

Justice Barrow noted that Anna had denounced and distanced herself from the defence filed jointly in her name and that of Merickston Jr. Additionally, during her testimony at trial, there was a clear statement that the defence was a forgery and a fraud, and, therefore, a nullity. In his opinion, Merickston Jr also had no standing to argue that the defence filed in Anna's name and in purported opposition to the daughter's claim did not constitute a fraud upon the court. Franziska's claims were therefore bound to succeed.

In the circumstances, the CCJ dismissed the appeals by Merickston Jr and upheld the majority decision of the Court of Appeal.

The matter was heard by the Honourable Justices Anderson, Rajnauth-Lee, Barrow, Burgess, and Jamadar. Mr. Estevan Perera appeared for Merickston Nicholson Jr and Ms. Ashanti Martin appeared for Anna Magdalena Ahrer Nicholson. Mr. Darrell Bradley and Ms. Kimberly Wallace appeared for Franziska Nicholson.

The CCJ's full judgment is available via [www.ccj.org](http://www.ccj.org).

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is

effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Saint Lucia and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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