

[1999–00 Gib LR 529]

IN THE MATTER OF PERERA

SUPREME COURT (Pizzarello, A.J.): June 6th, 2000

Succession—intestacy—bona vacantia—estate not bona vacantia until petition under Administrator-General Ordinance, s.19 heard—petition granted if valid and in interests of justice, i.e. petitioner claims other than as creditor and within limitation period—may be moral claim overriding Crown’s interest—relevant if petition unopposed

The petitioner applied for orders under the Administrator-General Ordinance for the payment to her of moneys from the deceased’s estate.

The deceased died intestate with no living relatives. Her funeral was arranged and paid for by the petitioner, the widow of the deceased’s late husband’s nephew. The petitioner and her husband had been in close contact with the deceased and her husband, giving them guidance and assistance in financial and other matters. The deceased and her husband had regarded their nephew as a son and as the desired recipient of their estate after their deaths. The deceased’s estate was realized by the Administrator-General and the proceeds deposited in a savings account. Only the petitioner came forward in response to the Administrator-General’s advertisement for claimants to the estate. She applied for reimbursement of the funeral expenses under s.17 of the Ordinance and the payment of the balance of the estate to her as a moral claimant under s.19. The petition was unopposed by the Financial and Development Secretary or the Attorney-General, representing the Crown’s interest in the estate as potentially *bona vacantia*.

The parties submitted that (a) the estate did not devolve as *bona vacantia* until the court had determined the petition; and (b) the petitioner’s moral claim to the estate overrode the Crown’s interest in the estate.

Held, granting the petition:

(1) The petitioner would be reimbursed the expenses of the deceased’s funeral, to which she was entitled under s.17 (para. 1).

(2) For the purposes of s.19, the petitioner had made a valid claim to the estate as a person claiming other than as a creditor and within the limitation period referred to in s.32(2) of the Administration of Estates Ordinance, namely that applicable to a similar claim against an individual. Although the estate could not be regarded as *bona vacantia*

until after the hearing of the petitioner’s claim under the Administrator-General Ordinance, the court had to consider the competing claims to the estate from the petitioner and the Crown in its assessment of what was just. In the circumstances of the petitioner’s relationship with the deceased and the fact that the petition was unopposed, the court was satisfied that the petitioner’s moral claim should override the Crown’s interest. It would order that the balance of the value of the estate be paid to her (paras. 10–13).

Case cited:

(1) *Ponomareff (Deceased), In re*, Supreme Ct., 1989 B. No. 1, unreported, applied.

Legislation construed:

Administration of Estates Ordinance (1984 Edition), s.32(2):

“No proceeding shall be instituted by or against the Crown in respect of the real or personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity within and subject to which a proceeding for the like purposes might be instituted by or against a subject.”

Administrator-General Ordinance (1984 Edition), s.17:

“As soon as may be after the Administrator-General has called in and administered the unrepresented estate he shall dispose of the moneys arising out of such estate in the manner following—

- ...
 (c) he shall pay the creditors of the estate in the order and manner prescribed by law; and
 (d) he shall pay the balance (if any) which remains after such payments aforesaid to the Financial and Development Secretary in trust for the person entitled thereto.”

s.19(1): The relevant terms of this sub-section are set out at para. 8.

(2): The relevant terms of this sub-section are set out at para. 8.

D.J.V. Dumas for the petitioner;

Miss K.M. Dawson, Administrator-General, for the Crown.

1 **PIZZARELLO, A.J.:** This morning I ordered that the funeral expenses paid by the petitioner be repaid to her out of the estate of the deceased to which she was entitled as a matter of law under s.17 of the Administrator-General Ordinance. I also ordered that the balance of the estate be paid to her pursuant to the discretion given to this court by s.19. I said I would hand down the reasons for the decision and I do so now.

2 The facts in this case are as follows. The deceased, Asuncion Perera, died between April 27th and 28th, 1995, a widow without issue or parent and without any brothers or sisters or any other known relative. The

deceased's husband had been one John Perera who had died on February 18th, 1985. The said John Perera had three brothers. The petitioner, Lina Perera is the widow of Arturo Perera who died on September 26th, 1993. The said Arturo Perera was the nephew of the aforementioned John Perera, being the son of Antonio Perera, one of John Perera's brothers.

3 Arturo Perera, together with the petitioner, was in close contact with John Perera and the deceased, giving of their time and affection, guidance and assistance in financial and other matters, to the extent that John Perera and Asuncion Perera considered Arturo as their son and expressed their wish that he should inherit their money. When John Perera died, both Arturo and the petitioner kept up their relationship with the deceased, and when Arturo died the petitioner continued to keep in touch. During this period the deceased expressed a desire to have a vault built in the cemetery where John Perera's remains could be interred and where, on her death, she would lie with him. She died before realizing her wish.

4 The deceased was born in Granada, Spain. She lived in Gibraltar for 50 years before her death and has no known relative. The only family of John Perera are his brother, Frankie Perera, and his issue and other nephews and nieces. However, none of them kept up any meaningful contact with the deceased and none of them attended her funeral.

5 To the petitioner fell the task of arranging for the deceased's funeral, paying the funeral expenses and clearing the deceased's flat. All the property of the deceased was handed to the Administrator-General. The value of the estate is now represented by the moneys in the Administrator-General's account in the Post Office Savings Bank, amounting to over £10,000. The Administrator-General has advertised for claimants of the estate in the *Gibraltar Chronicle* and in the *Gibraltar Gazette*, but only the petitioner has come forward.

6 Mr. Dumas submits that the claim is unopposed. The petition has been served on the Financial and Development Secretary and also on his legal adviser, the Attorney-General for Gibraltar, as persons representing the Crown whose interest in the estate is as *bona vacantia*. The Attorney-General wrote:

“Re: Estate of Asuncion Perera, deceased

I confirm that I have been referred to the petition of Lina Perera in connection with the above matter, together with the supporting exhibits and affidavit.

There is nothing in this petition that would suggest that it should be opposed, and I do so confirm.”

The Personal Secretary to the Financial and Development Secretary wrote:

“Estate of Asuncion Perera

As per my telephone conversation with your Ms. Sandra Salmon, we acknowledge receipt of Mrs. Lina Perera’s petition and supporting affidavit.

The Financial and Development Secretary has asked me to inform you that the matter is being dealt with by the Administrator-General, and that it will not be necessary for him to comment on the petition.”

7 Mr. Dumas argues that the estate does not devolve as *bona vacantia* until the court has determined this petition. For this reason, Mr. Dumas sought leave to amend the petition by substituting the words “*a bona vacantia*” with the words “an unrepresented estate.” I allowed the amendment and Mr. Dumas further argued that there was no need to serve the amended petition on either the Financial and Development Secretary or the Attorney-General, as they had already indicated there was no opposition to the petitioner’s claim on the basis that the estate was *bona vacantia*. However, he was prepared to adjourn the matter if the court thought fit to do so.

8 As to the petition, Mr. Dumas, for the petitioner, refers me to the terms of the Administrator-General Ordinance, s.19 which reads:

“(1) Any person who shall claim, in any other character than that of a creditor thereof, any estate or balance which may be in the hands or under the control of the Administrator-General or of the Financial and Development Secretary, may apply to the court by petition to have the same delivered over to him and the court upon being satisfied of the validity of such claim shall make such order as may be just. Where two or more persons lay claim to any such estate or balance, the court may, with the consent of the parties, dispose of their claims by determining the same in a summary manner, and may make such order therein with regard to costs and all other matters as the circumstances may require. Where the parties do not consent, they shall proceed to obtain a decision of their claims according to the ordinary course of law and the Administrator-General or Financial and Development Secretary, as the case may be, shall, if necessary, take such steps as shall be requisite for compelling such parties to interplead.

(2) Subsection (1) shall have effect as though it included equitable or moral claims by any such person as is mentioned therein to the personal estate of any person dying intestate without widow, husband, heirs or next of kin and all the provisions of that subsection with respect to the mode of procedure, the powers of the court and the consent of the parties shall apply to any such claim accordingly:

Provided that any such claim shall be subject to the like exceptions and limitations as are in force with respect to any proceeding mentioned in s.32(2) of the Administration of Estates Ordinance.”

9 Mr. Dumas submits that the petitioner falls within the terms of that section and refers me to the decision of Kneller, C.J. in this court in *In re Ponomareff (Deceased)* (1). The learned Chief Justice set out the relevant issues in that case, and I shall follow them.

10 The first issue is whether the petitioner’s claim to the estate is valid. It is unopposed and is within the purport of the Ordinance in so far as her claim is made in a character other than that of creditor. It is also made within the limitation period, according to s.32(2) of the Administration of Estates Ordinance.

11 The other issue which follows is what is just in this matter. The Administrator-General is satisfied she has done what can be done to identify the estate and anyone who has an interest in the estate, and there is no one other than the petitioner. And what is her claim? It is a moral one, specifically allowed for in the Ordinance. My question to counsel was: Does the Crown’s vested right to *bona vacantia* override this moral claim? Mr. Dumas’s answer, with which Miss Dawson agreed, and which I think is right, is that the estate is not *bona vacantia* (which applies to things “in which no one can claim a property . . .” (8 *Halsbury’s Laws of England*, 4th ed., para. 1503, at 897)) until the court rules on the petitioner’s claim.

12 But, given the circumstance that a ruling against the interest of the petitioner will vest the property *bona vacantia* in the Crown, the court has to consider the competing claims in the assessment of what is just. In this case the Crown, through its advisers, does not oppose, and that, I fancy, is a material factor. I am persuaded that since its decision not to oppose was on the premise that the estate was *bona vacantia*, its presence cannot usefully add anything more. Hence, I do not consider that the amendment to the petition warrants reservice.

13 Weighing up all the factors, I have come to the conclusion that the petitioner has made out her moral claim. It is also my view that it is just that the moral claim of the petitioner based on the facts set out in the second paragraph of this judgment should override the Crown’s interest in the estate as (potential) *bona vacantia*.

Order accordingly.