

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014-03151

**IN THE ESTATE OF VASHTI BAHADOOR also called
VASHTIE BAHADOOR also called VASHTEE BAHADOOR (Deceased)**

BETWEEN

LYNETTE BAHADOOR-SUGRIM

Claimant

AND

CARLTON MUSTAPHA

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Ms Samuels for the Claimant

Mr Thompson for the Defendant

Date: 27 September 2017

REASONS (Edited Oral Judgment)

1. This claim concerns the will of Vashti Bahadoor who executed it on 29 March, 2012. There were two witnesses to the will. These were Peter Celestine, who had assisted in preparing the will, and Ruby Dass-Ramsook. The will came about by Vashti asking for the assistance of her friend, Carlton Mustapha, to have the will prepared.
2. Vashti had prepared her last will and testament on 29 March, 2012 and she had asked her friend Carlton Mustapha to assist. In that context he arranged for Peter Celestine to assist her with preparing the will and Ruby Dass-Ramsook assisted in witnessing the will.
3. Vashti was never married. She had no children. At the time of her death, the Claimant, Lynette, her sister, and Lynette's husband, Ramjit Sugrim, resided with her.
4. The issue in this case concerns whether this last Will and Testament of Vashti was destroyed by her by her tearing the will. The other issue the court is concerned with is whether the will should be propounded in solemn form. But the first issue to resolve, is whether, in fact, she had destroyed this will made on 29 March, 2012. Both sides called witnesses and I will review the evidence of the witnesses now.
5. The first witness was Lynette Bahadoor-Sugrim. She is a retired public officer and her sister was Vashti Bahadur. She said Vashti was diagnosed with cancer in 2009 and she required care. During the course of this time her condition deteriorated and on 29 March, 2012 she said she came home in the night and she saw certain events were taking place. Carlton Mustapha was there and he indicated that he had met with Vashti and she had asked him to have a will prepared. She saw that one Peter Celestine was there and Vashti affixed her right thumb print to the will. She was there and she said only one will was executed. Vashti handed over the will to her to read and she read it, noted the contents and handed it back to her. Vashti was asked by Peter Celestine if she wanted to have the will registered at the Hall of Justice and she said no and she subsequently passed it to Lynette's husband, Ramjit Sugrim for safe keeping.
6. Subsequently, the will was never discussed between her and her husband. Vashti eventually passed away some ten months after on 17 January, 2013. In order for Vashti to be cremated approval had to be sought from the police service and she was asked whether Vashti had a will and she said yes and the police asked who was the executor and she said Carlton Mustapha. The police then called him and he gave permission for her body to be

cremated. She said after the forty day memorial service for Vashti her husband told her that she should apply for letters of administration of the Estate and she told him that that was not her problem since Carlton Mustapha was the executor of her will.

7. It was then and only then, approximately a year after the will was made, that her husband had told her that Vashti had invalidated the will and that the job of dealing with the Estate was hers. She asked him why she was not told so and he said he thought he had mentioned it. She gave evidence of certain other events which took place and later on she discovered when she applied for letters of administration a caveat had been filed by Carlton Mustapha.
8. Ramjit Sugrim gave evidence as well. He said he lived with his sister-in-law Vashti at her home. He assisted in caring for her and he assisted her in respect of her business and financial affairs when she could not take care of them. He had her personal identification numbers for her bank cards and he was able to deal with her accounts. He assisted her in various activities around the house. He gave evidence that in March 2012 Vashti had called Carlton Mustapha and asked him to come as a matter of urgency and this was to assist with a matter that she had with the Ministry of Food Production where she had worked. Secondly he was to assist with the preparation of her will and she recommended that Ajit Sugrim, who is his son, be named the executor.
9. He noted on 29 March, 2012 Carlton Mustapha came with a man and woman to the home and a will was done. He said that that was the first day those persons had come and they were Peter Celestine and Ruby Dass-Ramsook. After the will was executed Vashti asked Carlton Mustapha to read the will and he did so and while that was taking place his wife arrived home. He said that Vashti told him that night that Carlton Mustapha had told her more than once that she was ill and that he Carlton Mustapha was manipulating her to execute her will. She said she was sorry she had given him details of the Estate and Vashti told him that if she was not careful Carlton Mustapha and his employees could conspire to defraud their relatives of their inheritance. He however did nothing with this information.
10. He said that Mustapha had appointed himself as the sole executor of the Estate. He noted that sometime after that Carlton Mustapha had assisted his daughter in getting a job as an On the Job Trainee (OJT) where he worked. He said on 30 March, 2012, which was the next day, Vashti asked him for the will, she examined it to ensure it was the original and then she invalidated it by tearing one of the pages down its length. She gave him what was left of the will and insisted he should keep it. He asked her why she did that and she said

she was a very experienced Auditor and she knew what she was about. That was then passed on to her attorneys.

11. He said Vashti's health continued to deteriorate and she passed away the following year. He said after her forty day memorial service in discussions with his wife he realised that neither Vashti nor he had told her about the invalidation of the will and it was decided that she should apply for letters of administration. He said that it was only one will that was executed that evening. He said on 25 March, 2014 Carlton Mustapha met him and they spoke. He told Mustapha that he was present when Vashti had invalidated the will and Mustapha started to question him. He said Carlton Mustapha told him that Peter Celestine had always had Vashti's original will and that Celestine would not take that so easily and he told Mustapha that Vashti had thumb printed only one will. Mustapha told him that Celestine was a lawyer and he should not forget that it was a lawyer from the office and Ruby Dass-Ramsook who had witnessed the will.

12. The next witness called was Ajit Sugrim, who was Vashti's nephew. He gave evidence of his parents assisting her during the time of her illness. He also said that from time to time she would be weak. There were two other witnesses, Khalid Hakim and Ria Sallick Ogeer. Both of them said that they would visit from time to time, they knew Vashti. In particular Ria Ogeer said that on one of her visits to Vashti she noticed that she was unusually depressed, she was not her normal self and when she asked her why she was so upset she told her that she had asked Carlton Mustapha to prepare her will with instructions that her nephew, Ajit Sugrim be named the sole Executor and that Mustapha had prepared the will and named himself the sole Executor. That was her evidence.

13. For himself as defendant, Mr Mustapha gave evidence. He said that he had been the Executive Officer of the Sugar Industry Labour Welfare Committee. He knew Vashti Bahadur growing up in the same village, he knew her relatives and they became friends over time. They would often travel to work in the same vehicle when they worked in Port of Spain in the 1970's. Vashti placed confidence in him and would seek his advice and guidance from time to time. He said on 27 March, 2012 Vashti contacted him and asked him to visit her. She said she was ill and she wanted to prepare her will. They met that evening and he came with Peter Celestine who arrived a few minutes later who had previously assisted other persons to prepare wills. Vashti sat down with Peter Celestine and they held discussions for some considerable time and Celestine took down what she said. Celestine indicated that he could contact someone who can witness the will and Ruby

Dass came that evening as well and a handwritten will had been prepared and it was witnessed.

14. Subsequently, a typewritten copy of the will was prepared. He realised later on that he was appointed the executor in the will. As executor he granted permission for the body to be cremated. He attended the funeral. He recognised that Vashti's niece was the main beneficiary of the will. At some point he saw a notice in the newspaper with an application for letters of administration and he attempted to contact Vashti's sister Lynette. In doing so he spoke to Boyie, that is Lynette's husband, and there was a discussion. Sugrim told him whether the deceased had contacted him about the destruction of a will and he told Sugrim that he had spoken to the deceased up to the Sunday before she died and she had not mentioned anything about the will. Sugrim told him that the deceased had decided to tear up the will because she said there were too many vultures around. He asked him what that meant but there was no explanation. He said he asked him about it and Sugrim told him the will was burnt. He said that night Lynette contacted him and she told him that Vashti is accustomed setting her up and she had set her up again.
15. In February 2015 he said two of the beneficiaries of the will, that is, Vidyarti Sugrim and Naipaul Bahadur requested a meeting with him and they presented a proposal for him to relinquish his right as sole executor and he refused to accept that proposal because his intention was to carry on the wishes of the deceased.
16. Peter Celestine gave evidence. He indicated that on 27 March, 2012 he had received a phone call from Carlton Mustapha and he agreed to attend the home of Vashti Bahadur. There he assisted her in preparing a will and Ms Ruby Dass-Ramsook was contacted to witness the will. He did so and he prepared a handwritten will and he intended to have it typewritten for execution in a couple of days. He set out what he had done. That he read over the will to her and she executed it. He had other conversations with the deceased and he left.
17. On 29 March, 2012 he went back, that was two days later, with the typewritten will. It was in the exact terms as the original handwritten will. He arrived at her home and Ms Dass-Ramsook arrived a little while after and he saw the handwritten will being executed by Vashti and Ms Dass-Ramsook witnessed it. In that process he gave evidence that he had read over the contents. He gave evidence as to the process which was that the will was witnessed in the presence of each other. The handwritten will was then torn up. Two

copies were executed and he kept one and Vashti kept the other. The last one which was executed was kept by him. They had other conversations in respect of her illness and her battle with cancer. Later on he was introduced to Lynette. He said on 17 January, 2013 Carlton Mustapha told him that Vashti had died and he Celestine informed Mustapha that he had been made the sole Executor of the will, that is Mr Mustapha. He said he had noticed the application in the newspaper as well.

18. Ruby Dass-Ramsook gave evidence that she was the witness to a handwritten will as well as the typewritten will and her evidence was in similar terms to Peter Celestine and I do not propose to repeat it.

19. The last witness for the defendant was Naipaul Bahadoor. He is the nephew of Vashti. His aunt had no spouse or children. He said that his aunt and him became close after the death of his father. Carlton Mustapha and he would frequently visit her home and assist her. He said some years ago when he was arrested and charged with an offence his aunt posted bail for him. She got the assistance of an attorney to assist him. After his father's death she assisted him in getting a lawyer to administer his father's Estate. He learnt his aunt was diagnosed with cancer and he would assist her by transporting her for chemotherapy or hospital visits sometimes to the Sande Grande Hospital. He said during one of the visits to the hospital Vashti told him that she had prepared a will and he was one of the beneficiaries and she said that he would have to contact her sister Lynette who knew the details of the will. He said his aunt also told him about the contents of the will and he told his aunt that he did not trust Lynette. Vashti died in January 2013 and he attended the funeral. He said that he had conversations with Lynette and Lynette told him that she was not aware that his aunt had left a will and she told him this and insisted that Vashti had not left a will. He said in January 2015 Lynette visited his home and told him that Vashti had left a will and named Carlton Mustapha as the Executor. He said he was shocked and alarmed that she was now admitting to the existence of a will. He eventually saw a copy and that he was a beneficiary. He received a call to attend a family meeting and he was present with members of the family including Lynette, Ramjit and the children. Lynette told him that she did not trust Carlton Mustapha, the Executor and she prefers to apply for letters of administration and that she would then distribute the assets in accordance with the will. He did not understand why this proposal was being made. He subsequently attended meetings with them on more than one occasion which led to him meeting with Mr Mustapha and presenting him with a proposal that Mr Mustapha would relinquish his right to apply for probate and instead that himself and Vidyarti would apply for letters of administration with the will annexed. And that the claimant would withdraw the claim and compel the Executor

to probate the will within a specified period of time. I will return to his evidence because his evidence is important in material respects.

20. The witnesses were cross examined and I will not go through the entirety of the cross examination but merely highlight a few points. Lynette Bahadoor-Sugrim said she never discussed a will with Naipaul. She could not remember if she told him he was a beneficiary. She said that at the reading of the will on 29 March Vashti did not stop Carlton from reading the will. She made no objections about the contents of the will. She did not say she wanted anything changed and she was alert during the reading of the will. She told her that Carlton was the Executor. She said she never discussed with her that Ajit her son would be the Executor. She said after the will they never discussed it again. She said she was alert when she signed the will. She was asked about pursuing a finger print expert to authenticate the finger print on the will. She was asked why did she not pursue it and she said she followed her lawyer's advice, that he is knowledgeable and she is not. She said she did not seek to verify the thumb print. She said that her sister was accustomed to dealing with her business. She accepted that with the will her children would get 90% of the Estate and without the will her family would get much less. She said the fact that most of the Estate went to her children pleased her and that her husband and her were given a life interest in her house amused her. She said her sister could use the telephone without assistance.

21. Ramjit Sugrim gave evidence. He said that before Vashti's death he did not tell anyone that she invalidated the will. He said that she would leave money with him. She left an account at the UTC, she told him he could access it after her death. He had access to her funds and her bank accounts to handle her affairs. He suggested that the will which has been presented is a forged will because only one was executed. He said he kept copies of the invalid will. She had crumpled it and given him it to dispose in the garbage. He then said she asked him for the will and she did not crumple it. He said that she had left torn pieces on the table and he made two copies of the torn will. He was asked whether he agreed that the contents of the will submitted are identical and he said yes but not the thumb print. He said Vashti also did not make any objections during the reading of the will and she did not want any changes made. He said that she signed it in the presence of five people and she did not appear fearful or intimidated or worried when she signed it. She told him she knew exactly what she was signing and the contents were exactly what she wanted except for the named Executor. However she made no change to that.

22. Ajit Sugrim was cross examined. There was nothing eventful about his cross examination. Khalid Hakim was also cross examined. He said when he would meet Vashti she would be frail and weak. This included up to 2012 and she always had somebody with her and he did assist her.
23. Ria Ogeer in cross examination said she would notice Vashti weak and ill. She didn't remember when she died. She said she would visit her and talk to her. She said Vashti never mentioned that she was making a will. She never told her that she had contacted someone to make a will. She said she did not tell anyone that Vashti was depressed. It was only after she died that she told someone that she wanted Ajit as the Executor. She can't remember when these conversations took place. She did not tell anyone about the conversation. She said it was about two months before Vashti died that the conversation took place but then she said she couldn't remember when Vashti died and she didn't recall the year she made the will. She said she told her uncle Ramjit about it and he did not say anything to her.
24. In respect of the witnesses for the claimant I found Ramjit Sugrim's story to be implausible. And I will revert to my findings in respect of the cross examination in a short while. Carlton Mustapha was cross examined. He said that Vashti and him were from the same village. She would contact him by phone. They met from time to time. They developed a close relationship. He said when she called him they made arrangements to meet and he made contact with Mr Celestine and that she had full control of her faculties. She spoke to her. He said Celestine and she conversed. He stayed until Ruby Ramsook came and then he left after introducing them. The next time he saw Vashti was at a funeral but he would speak to her on the phone and Vashti had called him up to the Sunday before she died to ask for his assistance with something. He said that he had had a conversation with Ramjit Sugrim about the beneficiaries of the will. He said his organisation is a welfare organisation under the Ministry of Housing and he was an ex-officio Justice of the Peace and part of their role would be to help clients with wills, statutory declarations tenancy agreements. He said they were also involved with land development and building lots. He saw no conflict of interest with Celestine or Ramsook being involved with the will.
25. Ruby Dass-Ramsook was cross examined and she more or less maintained her evidence about how the will was executed. She gave evidence as how she came to be involved in the reading and execution of the will.

26. Peter Celestine was also cross examined. He gave the process as to how he came to prepare the will. He gave the process as to how he came to prepare the will. He gave details. In cross examination he essentially maintained what he said in his witness statement. He said the handwritten will was torn up in her presence and she gave him the copy of the original will and had another executed copy for herself. In answer to the court, he said while he and Vashti was speaking given the contents and the beneficiaries, where her niece was the main beneficiary, she wanted to make sure what had been given to her would go to her. She said she was not sure if she had left only one document whether that would have taken place. She said if she had signed the only one document she was not sure it would come forward for probate.
27. I had to consider the versions on both sides. I found the version of the claimant to be implausible. I found it very suspicious that only Ramjit Sugrim would have known of the destruction of the will. I found it suspicious that the day after she executed the will that she would have destroyed it.
28. It is clear from the evidence of all the witnesses that Vashti despite her illness was in control of her faculties. She was in control of her business affairs. She had a determined position as to who should benefit from the will. I find it implausible and highly unlikely that during the taking of the will that she would make no objections to who the Executor was. But that the following day she would seek to destroy the will. I considered that the reason she called Carlton Mustapha was that she trusted him that he would ensure her wishes were carried out. I found it implausible that she would tell no one before her death – she died some ten months afterwards – that she had destroyed the will. From all of the evidence I am satisfied that she had mental capacity to make the will and in fact on the evidence of both sides it is clear that she had her mental faculties. I was satisfied with the process taken in the execution of the will. In respect of certain aspects of the cross examination this led to certain conclusions.
29. Of key interest, Naipaul Bahadoor was not cross examined. Naipaul Bahadoor gave evidence that one would have expected would have been challenged in particular the conversations he had with Lynette. His evidence of those conversations he had with Lynette where Lynette told him that Vashti did not leave a will was significant bearing in mind he was a beneficiary of the will. It was also significant that he was not challenged about his evidence that Lynette had told him that she did not trust Carlton Mustapha and particularly when he asserted that she would prefer to apply for Letters of Administration and then distribute the assets in accordance of the will. I find it strange that only Ramjit

Sugrim would know of the execution of the destruction of the will. His evidence was that he never told his wife about the destruction of the will. I also find that to be highly suspicious and that the only time he mentioned it to her was well after the funeral. It is to be noted that if the court pronounces against the will, Naipaul is likely to be disinherited.

30. Based on the evidence, it is my conclusion that the claimant and her husband do not wish that Carlton Mustapha should be Executor of the will. I find that Vashti first executed a handwritten will and then two copies of the typed will. I found no reason to disbelieve Celestine and Ms Dass-Ramsook in respect of their involvement with the will. I found them to be independent witnesses who have no interest to serve. Carlton Mustapha has no benefit under the will. He is the Executor and I find no reason to consider why he would not have acted in accordance with the instructions of Vashti. It seems to me from all of the evidence that it is the claimant and her husband who are not satisfied that Carlton Mustapha should be the Executor and they wished to have him removed. I also noted that Lynette was a highly educated woman and she knew what she was about. If she did not want Mustapha to be the Executor of the will she had many opportunities to change her will and I do not accept that she would have executed a will in which Mr Mustapha was named the Executor if she did not wish that to happen. The explanation for her destroying the will that she accepted the contents and she agreed with the contents but her only issue was that Carlton Mustapha had named himself the Executor of the Will, I find that incredible and I do not accept it.

31. Having regard to my findings and conclusions in respect of the evidence, the claim is dismissed. There would be judgment in respect of the counterclaim and the court pronounces in solemn form for the Will of the deceased dated 29th March, 2012.

32. The claimant will pay the cost of the claim and of the counterclaim, each in the sum of \$14,000.00.

Ronnie Boodoosingh
Judge