

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

Claim No: CV2015-03943

**BETWEEN**

**ALLISON MATTHEWS**

Claimant

AND

**PATRICK URQUHART**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Mr. F. Wilson for the claimant

Mr. A. Khan instructed by Ms. C. Peter for the defendant

## Judgment

1. This claim concerns the validity of a Will executed by Carol Austin Wilson-Urquhart also called Carol A. Austin Wilson-Urquhart also called Carol Austin Wilson also called Carol Austin Wilson Urquhart (“the deceased”) on the 28<sup>th</sup> May, 2010. The deceased died on the 24<sup>th</sup> November, 2014 at the age of sixty years. The claimant who is the sister of the deceased was named the sole executrix in the Will. The defendant who is the widower of the deceased applied for a Grant of Letters of Administration of the estate of the deceased.
  
2. It is the case of the claimant that as the Will exists, the defendant is not entitled to make an application for a grant of letters of administration for the estate of the deceased. Consequently, by Claim Form filed on the 17<sup>th</sup> November, 2015 the claimant claims the following relief;
  - i. That the court pronounce for the force and validity of the last Will and testament bearing date the 28<sup>th</sup> day of May, 2010 of Carol Austin Wilson-Urquhart also called Carol A. Austin Wilson-Urquhart also called Carol Austin Wilson also called Carol Austin Wilson Urquhart and decree probate thereof to the claimant in solemn form;*
  
  - ii. That the defendant be ordered to withdraw application for a grant of Letters of Administration of Estate of Carol Austin Wilson-Urquhart also called Carol A. Austin Wilson-Urquhart also called Carol Austin Wilson also called Carol Austin Wilson Urquhart No. L 1546 of 2015;*
  
  - iii. Costs;*
  
  - iv. Such further or other relief as the court deems fits.*
  
3. By Defence and Counterclaim filed on the 21<sup>st</sup> March, 2016 the defendant claims that the deceased died intestate. That after her death, he made diligent searches among the papers and effects of the deceased and also in the depository for Wills of living persons in the Registry of the Supreme Court for a Will and/or other document of testamentary character

of the deceased and found none. As such, it was the claim of the defendant that he had no knowledge of the Will.

4. The defendant requires the claimant to strictly prove that the Will of the deceased was executed in accordance with the provisions of the Wills and Probate Act Chapter 9:03. The defendant claims that based on certain suspicious circumstances surrounding the preparation and execution of the Will, it was clear that the deceased lacked knowledge and approval of same.
5. Further, the defendant claims that during his marriage with the deceased, he invested his savings and retirement funds into the matrimonial home and into the construction of the dwelling houses on the lands more particularly described in Deed dated the 21<sup>st</sup> August, 2006 and registered as DE200700412046, Deed dated the 5<sup>th</sup> September, 2007 and registered as DE200802445590 and Deed dated the 10<sup>th</sup> February, 2009 and registered as DE200900589508 (“the properties”). As such, in the alternative and by way of counterclaim, the defendant is seeking a declaration that he has acquired an equitable interest in the matrimonial home and the properties.

### **The issues**

6. The issues for determination are as follows ;
  - i. Whether the Will of the deceased was validly executed in accordance with the Wills and Probate Act, Chapter 9:03; and
  - ii. Whether the defendant has acquired an equitable interest in the matrimonial home and the properties.

### **Case for the claimant**

7. The claimant gave evidence and called one other witness Ms. Tara Lutchman, Attorney at Law (“Ms. Lutchman”).

## **The evidence of the claimant**

8. The claimant resides at No. 3529 Cherry View Place, Decatur, Georgia 30034 in the United States of America (“USA”). She testified that the last Will and testament of the deceased was prepared by Attorney-at-Law, Ms. Lutchman at the law offices of Yaseen Ahmed located at Kings Court, Second Floor, Corner of Park & Abercromby Streets, Port of Spain. The Will (which is a hand written document) provides as follows;

*“THIS IS THE LAST WILL AND TESTAMENT of CAROL A. AUSTIN WILSON-URQUHART, housewife and business woman of No 4 Squires Trace, Chin Chin Road, Las Lomas No 1 Cunupia in the Island of Trinidad.*

*I HEREBY REVOKE all previous Wills and Testamentary Dispositions heretofore made by me and I declare this to be my last Will and Testament.*

*I HEREBY APPOINT my sister ALLISON MATTHEWS of Cherry View Place, Atlanta, Georgia in the United States of America to be my Executrix of this my Will and Testament herein (hereinafter called “my said Executrix”)*

*AFTER PAYMENT OF ALL MY DEBTS AND TESTAMENTARY EXPENSES*

*AT THE TIME OF MY DEATH and upon making of this will I am the owner of the following items;*

- 1. 2 Bank Accounts with Republic Bank*
- 2. 1 Bank Account with RBTT Bank*
- 3. 1 Fixed Deposit Account with RBTT Bank*
- 4. 3 Unit Trust Accounts*
- 5. 1 Safety Deposit box with Scotia Bank containing all my jewelry*
- 6. 5 properties situate at Squires Trace, Chin Chin Road, Las Lomas No 1, Cunupia comprising 4 houses and land more particularly described in Deed No 5274 of 1993, Deed No DE200900589508, Deed No DE200802445590, Deed No DE200700412046 and Deed No 16146 of 1998.*

*I HEREBY GIVE, DEVISE AND BEQUEATH all the items referred to about at No. 1 to 6 to my son MAURICE AUSTIN, my daughter CHRISTINE AUSTIN URQUHART, my nephew JEREL MATTHEWS, my sister ALLISON MATTHEWS, my nephews MARK AUSTIN and RYAN AUSTIN and my niece KELLY AUSTIN to hold and share equally for their use and benefit as long as they live and thereafter to go to their heirs and assigns with my intention being for the above properties to be kept within the family subject to a life interest which I give to my husband PATRICK URQUHART in the house and land at No 4 Squires Trace, Chin Chin Road Las Lomas No 1 Cunupia until my husband dies.*

*I HEREBY GIVE DEVISE AND BEQUEATH all the remainder and residue of my estate both real property and personalty not specifically dealt with herein to MAURICE AUSTIN, CHRISTINE AUSTIN URQUHART, JEREL MATTHEWS, ALLISON MATTHEWS, MARK AUSTIN, RYAN AUSTIN and KELLY AUSTIN to share equally...”*

9. The claimant testified that when she was on vacation in Trinidad during the month of July, 2009 the deceased asked her to be the executrix of her last Will and testimony and that she accepted the deceased's request. The claimant further testified that when the deceased visited her home in the USA in June, 2010, she (the deceased) informed her that she had prepared the Will. According to the claimant, the deceased gave her the details of the Will and informed her that in the event of her (the deceased's) death, a copy of the Will was in her safety deposit box at Scotiabank.
10. When the claimant was on vacation in Trinidad during the month of June, 2012 the deceased took her to the building at Kings Court and gave her the attorney's card. The deceased then told the claimant that to go to the office on the second floor in the event of her death.
11. The claimant testified that after the deceased's death on the 24<sup>th</sup> November, 2014 she (the claimant) met with Ms. Lutchman. Ms. Lutchman told the claimant to get the copy of the

Will from the bank and to return to see her. On the 9<sup>th</sup> December, 2014 the claimant's then Attorney-at-Law, Ms. Marsha King and the claimant retrieved the copy of the Will from Scotiabank, Park & Pembroke Streets, Port of Spain. On the 11<sup>th</sup> December, 2014 Ms. King retrieved the original Will from Ms. Lutchman.

### **The cross-examination of the claimant**

12. During cross-examination, the claimant testified that the deceased and the defendant were married for fourteen years. Further during cross-examination, the claimant testified that the deceased told her that during her marriage, she (the deceased) worked as a seamstress, beautician and also ran a bar. As such, it was the testimony of the claimant that based on what the deceased told her, she (the deceased) had a source of income and did not depend on the defendant for money.
13. The claimant accepted that the properties described in Deed dated the 21<sup>st</sup> August, 2006 and registered as DE200700412046, Deed dated the 5<sup>th</sup> September, 2007 and registered as DE200802445590 and Deed dated the 10<sup>th</sup> February, 2009 and registered as DE200900589508 were acquired during the time the deceased was married to the defendant. As such, she agreed that when the defendant and the deceased got married, the deceased was only in possession of the matrimonial home. However, she testified that based on what the deceased told her, the defendant did not contribute financially to the acquisition of the properties.
14. The claimant testified that she did not know the defendant prior to his marriage to the deceased. That she also did not know that the defendant and the deceased were living together for a year prior to their marriage. She knew however that the defendant worked in the Defence Force and that when he retired, he obtained a gratuity. She again denied (on the basis of what the deceased told her) that the defendant used his gratuity to obtain the properties.

15. The claimant testified that the deceased told her that she had a son named Maurice Austin (“Maurice”) but that she never met Maurice. She also testified that the deceased sent her photographs of Maurice but none were produced to this court. The claimant further testified that she does not know Christine Austin Urquhart (“Christine”). That the deceased never spoke to her about Christine.
16. The claimant testified that Jerel Matthews (“Jerel”) is her son, Mark Austin (“Mark”) and Ryan Austin (“Ryan”) are her nephews and Kelly Austin (“Kelly”) is her niece.
17. She further testified that the signature on the Will does appear to be that of the deceased. When asked if the signature on the Will appeared to be different to those on the deeds, the claimant testified that it did not and that as persons get older their signatures change. She then testified that she did not look at the signatures on the Will and on the deeds to make a comparison.

### **The evidence of Ms. Lutchman**

18. **Ms. Lutchman** was admitted to the bar in Trinidad and Tobago on the 10<sup>th</sup> April, 2008. She was an Associate Attorney-at-Law at Yaseen Ahmed & Associates. She testified that on the 28<sup>th</sup> May, 2010 during her employment with Mr. Yaseen Ahmed (“Mr. Ahmed”), the deceased visited the offices of Mr. Ahmed and requested their legal services to prepare a Will on her behalf. Ms. Lutchman became aware through Mr. Ahmed that the deceased was a client of his for whom he acted prior to that day.
19. Mr. Ahmed assigned Ms. Lutchman to meet with the deceased, take her instructions and prepare her Will. Ms. Lutchman testified that as a general rule, all Wills are typed formally before execution by clients. However, in this case because of the time constraints, a decision was made by Ms. Lutchman’s senior to have the deceased execute Ms. Lutchman’s hand written draft of the Will prepared on the deceased’s instructions. Ms. Lutchman was clear in her evidence that the Will was done in her handwriting.

20. Ms. Lutchman met with the deceased, took her instructions and prepared the Will simultaneously in the deceased's presence based on the deceased's instructions. Ms. Lutchman recalls that the deceased presented her with certain deeds and financial documents to properties and bank accounts owned or held by her for review. Ms. Lutchman used those documents to obtain certain information to include in the deceased's Will.
21. Upon completion of the Will, Ms. Lutchman sought the assistance of the then receptionist to Mr. Ahmed, Patricia Haynes ("Haynes") so that Haynes and she (Ms. Lutchman) could formally witness the execution of the Will by the deceased. Haynes died on the 19<sup>th</sup> April, 2015.
22. Ms. Lutchman testified that the deceased read, approved and executed the Will in the presence of both her and Haynes and that thereafter Haynes and she executed the Will in the capacity of witnesses in the presence of the deceased and each other. She further testified that on the instructions of the deceased, the original Will was retained by the office for safekeeping and a copy was given to the deceased for her record. A file was opened and the original Will was secured therein. This witness testified that a copy of the said Will was attached to her witness statement but no such Will was attached. In any event there is no issue between the parties that the Will attached to the claimant's list of documents is the Will to which the witness referred.
23. The witness identified her signature and further testified as she personally witnessed Haynes signing the Will, the signature "*Patricia Haynes*" ascribed to the foot of the Will is that of Haynes. Moreover, she testified that having personally witnessed the execution of the Will by the deceased, the signature on the Will is that of the deceased.
24. Ms. Lutchman testified that fees were paid by the deceased for the legal services renders. However, she could not recall the amount which was paid.
25. Following the death of the deceased, Ms. Lutchman's office received a call from Ms. King Attorney at law. Ms. King on behalf of the claimant enquired about the original Will of the

deceased. Ms. Lutchman testified that the deceased's file which contained the original Will of the deceased was located and same was released to Ms. King.

26. Ms. Lutchman testified that prior to the deceased's visit to the office on the 28<sup>th</sup> May, 2010, she did not know her. She further testified that she did not recall the deceased contacting the office with respect to her Will or for any other matter after the 28<sup>th</sup> May 2010.

### **The cross-examination of Ms. Lutchman**

27. During cross-examination, Ms. Lutchman testified that this Will was not the first Will she prepared. That she is familiar with the clause in a Will that speaks to the soundness of mind and body of the testator but that same was not included in this Will as she did not have any concerns about the deceased's soundness of mind.

28. Further during cross-examination, Ms. Lutchman confirmed because the deceased was pressed for time, the Will was hand-written. She testified that it did not concern her that the deceased was pressed for time.

29. Additionally, Ms. Lutchman testified that she did not ask the deceased if she was being unduly influenced. That the deceased did not appear ill to her.

30. Moreover, she testified that based on the instructions given to her by the deceased, she did not find it strange that the deceased, a married woman was only leaving a life interest in the matrimonial home for her husband. Ms. Lutchman testified that she did not verify whether the persons named in the deceased's Will actually existed.

31. Ms. Lutchman could not recall whether she saw the deceased's identification card. However, she testified that she had no reason to disbelieve that the deceased was the person she said she was since Mr. Ahmed who had done work previously for the deceased had introduced the deceased to her.

## **The case for the defendant**

32. The defendant was the only witness on his case. The defendant and the deceased were married on the 19<sup>th</sup> September, 2000. For the duration of their marriage and up to her death, the deceased and the defendant lived together at the matrimonial home situate at 4 Squires Trace, Chin Chin Road, Las Lomas No. 1 Cunupia (“the matrimonial home”). According to the defendant, the deceased died at the Eric Williams Medical Sciences Complex.
33. The defendant testified that during his marriage with the deceased, she and he invested in the renovation of the matrimonial home. He further testified that the deceased was never employed. That he was a member of the Defence Force for many years and was the sole provider of the family.
34. The defendant’s salary fluctuated over the years but in the final couple of years before the deceased’s death, his average salary was \$15,000.00 per month. After retirement, his monthly pension was \$7,000.00 and his gratuity was \$325,000.00. He testified that all of his salary and other income were deposited into his account. That the deceased was always in possession of his bank card and was the one who balanced their finances. He further testified that the family spent an average of \$5,000.00 on a monthly basis.
35. The defendant testified that as he and the deceased lived alone, they would usually discussed all affairs with each other.
36. On three occasions during his marriage with the deceased, they learnt of parcels of land for sale. He and the deceased discussed purchasing the lands then bought same. He further testified that from the proceeds of his gratuity and retirement lump sum received from the Defence Force, the deceased and he built dwelling houses on the lands more particularly described in Deed dated the 21<sup>st</sup> August, 2006 and registered as DE200700412046, Deed dated the 5<sup>th</sup> September, 2007 and registered as DE200802445590 and Deed dated the 10<sup>th</sup> February, 2009 and registered as DE200900589508 (“the properties”).

37. The defendant testified that throughout his marriage with the deceased, they collaborated about their intentions for the development of the properties located at Cunupia. He further testified that he made substantial financial contributions towards the purchases of the properties based upon the assurances of the deceased that the properties belonged to them. According to the defendant, to his dismay he learnt that the deeds to the properties were only placed in the deceased's name.
38. The defendant testified that shortly after the death of the deceased, he made diligent searches among the papers and effects of the deceased and also in the depository for Wills of living persons in the Registry of the Supreme Court for a Will and/or other documents of testamentary character of the deceased and that none was found. As such, it was his testimony that he had no knowledge of the Will until this court action.
39. The defendant testified that as he always believed that the deceased and he had a good relationship, he was surprised to learn of the alleged Will.
40. According to the defendant, the signature appearing on the Will does not bear any resemblance to the known signature of the deceased. He testified that the signature on the Will is also different to those appearing on the deeds. He led no expert evidence in that regard.
41. Additionally, the defendant testified that in the alleged Will there are persons referred to as the son and daughter of the deceased namely Maurice Austin and Christine Austin Urquhart. The defendant testified that the deceased had no children during her lifetime and that there were no children regarded as children of the family. As such, it was his testimony that he is not aware of any person whom the deceased referred to by such names.
42. Further, the defendant testified that taking into consideration the open communication the deceased and he shared over the years, it was passing strange that he had no knowledge of the existence of the alleged Will.

### **The cross-examination of the defendant**

43. During cross-examination, the defendant testified that the deceased died from HIV and stage four breast cancer. He reiterated that she did not have any children. Further, he testified that the matrimonial home belonged to the deceased from a prior marriage.
44. The defendant accepted that he did not produce any documentary evidence to prove the amount of money he expended on renovating the matrimonial house. He further accepted that he did not produce any pay slips or documents to prove that his average salary prior to retirement was \$15,000.00 and that his retirement cheques were \$7,000.00 per month. He also accepted that he did not provide any documentary proof that he received a gratuity payment of \$325,000.00. Moreover, he accepted that he did not produce any documentary evidence to prove that he used his gratuity to purchase the properties.
45. The defendant testified that he knows Indar Rago (‘‘Rago’’). Rago is the surveyor that surveyed the properties and produced the survey plans attached to Deed dated the 21<sup>st</sup> August, 2006 and registered as DE200700412046 (‘‘the 2007 deed’’), Deed dated the 5<sup>th</sup> September, 2007 and registered as DE200802445590 (‘‘the 2008 deed’’) and Deed dated the 10<sup>th</sup> February, 2009 and registered as DE200900589508 (‘‘the 2009 deed’’). In the 2007 deed, the survey plan attached thereto was dated the 3<sup>rd</sup> November, 2003. The defendant testified that he could not recall if he was present for that particular survey but that he was present for the other two survey plans attached to the 2008 and 2009 deeds. That he walked through the lands described in the 2008 and 2009 deeds and gave Rago instructions when he was surveying the lands.
46. He further testified that the deceased was not employed during their marriage. That although he was aware that she had bank accounts, he provided the monies deposited into the accounts. It is to be noted that he provided no proof of this assertion other than his testimony.

47. He denied that the deceased was a seamstress during their marriage. He testified that she ran a bar prior to their marriage. As such, it was his testimony that the deceased lied in the 2007 deed when she stated that she was a seamstress. That she also lied when she described herself in the Will as a business woman. He then testified that if one is working for his or herself, he or she is not employed. He also testified that the deceased did rent the properties and that she collected the rent from same prior to her death. He now collects the rent.
48. He accepted that the deceased had gotten into an accident and that Mr. Ahmed had dealt with the matter on behalf of the deceased. That the deceased received a \$100,000.00 settlement for the accident and that they bought a vehicle with the money. He further testified that although he knows Mr. Ahmed, where his office is located and has been to the offices of Mr. Ahmed, however he never went to Mr. Ahmed's office to sign any deed. That although he provided the monies for the purchase of the properties, he did not visit the offices of Mr. Ahmed when he found out that the 2007, 2008 and 2009 deeds were executed in the deceased's name alone to question why that was so. He also testified that he did not question the deceased when he realized that her name alone was on the deeds because he was the perfect husband.
49. The defendant admitted that he never mentioned to the deceased that he had a sixteen year old daughter. Further, he testified that the deceased did tell him that she had a brother named Clyde Austin ("Clyde") and that Clyde has three children, Mark, Ryan and Kelly. Those names were therefore not unfamiliar to him.
50. During cross-examination, the defendant testified that he knew that the deceased had a safety deposit box at Scotia Bank and that although he has a key for the box, he did not access same after the deceased died. He further testified that he did not go to Mr. Ahmed's office to find out if the deceased had executed a Will because he was not expecting her to have executed a Will.

**Issue 1** - *whether the Will of the deceased was validly executed in accordance with the Wills and Probate Act, Chapter 9:03*

## The law

51. In order for a Will to be validly executed, it must be made in accordance with Section 42 of the Wills and Probate Act Chap. 9:03 which provides as follows;

- i. The Will must be in writing and made by the deceased;
- ii. The Will must be signed at the foot or end of it by the deceased or by some other person in his presence and by his direction;
- iii. The signature must be made by the deceased or acknowledged by him in the presence of two or more witnesses;
- iv. The witnesses must be present at the time the deceased affixed his signature and they attested and signed the Will in the presence of the Deceased and of each other.

52. The onus of proving that the Will propounded was executed as required by law is on the party propounding it. The onus is a shifting one. It is for the person propounding the Will to establish a prima facie case by proving due execution. If the Will is not irrational, and was not drawn by the person propounding it and benefiting under it, the onus is discharged unless and until, by cross examination of the witnesses, or by pleading and evidence, the issue of testamentary capacity or want of knowledge and approval is raised. Once raised the onus then shifts again to the person propounding. As to other allegations the onus is, generally speaking, on the party making them.<sup>1</sup>

53. In Marilyn Lucky v Maureen Vailoo,<sup>2</sup> Stollmeyer J (as he then was) summarized the applicable principles to due execution as follows;

*“1. The onus of proving a will as having been executed as required by law is on the party propounding it;*

*2. There is a presumption of due execution if the will is, ex facie, duly executed;*

*3. The force of the presumption varies depending upon the circumstances. The presumption might be very strong if the document is entirely regular in form, but where it is irregular*

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<sup>1</sup> See Tristram and Coote's Probate Practice 30th Edition, page 813 paragraph 34.06

<sup>2</sup> HCA 1398/ 1996, page 16

*or unusual in form, the maxim omnia praesemuntur rite esse acta cannot apply with the same force, as for example, would be the case where the attestation clause is incomplete;*

*4. The party seeking to propound a will must establish a prima facie case by proving due execution;*

*5. If a will is not irregular or irrational, or not drawn by a person propounding the will and benefitting under it, then this onus will have been discharged;*

*6. If by either by the cross-examination of witnesses, or the pleadings and the evidence, the issues of either testamentary capacity or want of knowledge and approval are raised, then the onus on these issues shifts again to the party propounding the will;*

*7. Even if the party propounding the will leads evidence as to due execution, there is still the question of whether the vigilance and suspicions of the court are aroused. If so, then the burden once again reverts to the party seeking to propound;*

*The onus as to other allegations such as undue influence, fraud, or forgery, generally lies on the party making the allegation.”*

### **Analysis and findings**

54. The onus of proving that the Will of the deceased was executed as required by law lay with the claimant, however, the onus was a shifting one. An examination of the purported Will appeared to show *ex facie* that it was duly executed. It was signed at the foot, the attestation clause appeared to be in usual and regular form and the signatures of the two attesting witnesses followed that of the testator. Further, it was not drawn by the person propounding it and benefitting under it. The Will was not on its face irrational or irregular therefore the *maxim omnia praesemuntur rite esse acta* would have applied, the onus on the claimant having been discharged.

55. The defendant disputes that the Will on the following grounds;

- i. The signature on the Will does not bear any resemblance to the known signature of the deceased;

- ii. In the Will persons are named as the son and daughter of the deceased when the deceased never had any children;
- iii. The above two suspicious circumstances surrounding the execution and preparation of the Will showed that the deceased did not know or approve the Will; and
- iv. If the deceased did execute the Will, it was not executed in accordance with the provisions of the Wills and Probate Act Chap 9:03.

56. The defendant failed to provide any evidence to support his allegations or to cause the suspicion or the vigilance of the court to be aroused. Although the defendant testified that the signature on the Will does not bear any resemblance to the known signature of the deceased, he did not seek to employ the assistance of a hand-writing expert to assist the court in the proof of his case. His is a matter of suspicion only. But even more so, in the court's view, the suspicions of the defendant are baseless and unreasonable as he presented no evidence of any real disability or lack of testamentary capacity on the part of the deceased in the year 2010 some four years before her death.

57. In the absence of such evidence, it would have been highly speculative on the part of the court to find that the signature on the Will is not that of the deceased.

58. The defendant testified that taking into consideration the open communication he and the deceased shared, it was passing strange that he had no knowledge of the existence of the Will. However, he admitted during cross examination that he kept the existence of his daughter a secret from his wife for her entire life, or so he may have thought. It was therefore clear to this court at the very least that the defendant and the deceased did not share all matters with each other. It is therefore of no surprise that the existence of the Will would have been kept from the defendant. The court therefore finds that there was nothing suspicious about the fact that the defendant had no knowledge of the existence of the Will.

59. The defendant also testified that there were dispositions in the Will to non-existent persons. That Maurice and Christine who were described as son and daughter of the deceased in the Will did not exist. During cross-examination however, the claimant, testified that the

deceased told her that she had a son named Maurice and that the deceased had in fact sent her photographs of Maurice. The claimant admitted that she does not know Christine because the deceased never spoke to her about Christine. As a matter of common sense and as a matter of human behaviour, it is reasonable that a party to a marriage who does not share information readily with the other party, that being the true nature of their relationship, may choose to confide in blood relatives instead for reasons best known to themselves. In this case, it is obvious that the deceased chose to confide in her sister and not her husband. She may have had a valid reason for so doing in her eyes but that was a matter solely for her. So that the court believes the claimant's evidence that she was provided with pictures of Maurice by the deceased. Suffice it therefore to say that the defendant's ignorance of both children, one of whom is known to be alive does not in any way cause the slightest suspicion in the view of this court.

60. The defendant argued that because of 1) the secrecy surrounding the preparation and execution of the Will, 2) the fact that signature on the Will does not bear any resemblance to the signature of the deceased and 3) there were dispositions in the Will to non-existent persons showed that the deceased did not know and approve of the Will.

61. In order to prove due execution of the Will, the claimant called Ms. Lutchman who was one of the attesting witnesses to the Will and also the attorney-at-law who prepared the Will. The court finds that evidence of Ms. Lutchman was reliable and unchallenged. Ms. Lutchman, who has been in practice for the past ten years, testified that the deceased visited the law offices of Mr. Ahmed where she worked as an Associate and requested that a Will be prepared on her behalf. She further testified that Mr. Ahmed who had done work previously for the deceased introduced her to the deceased and assigned her to meet with the deceased, take the deceased's instructions and prepare the deceased's Will.

62. Ms. Lutchman testified that she took instructions from the deceased and was presented with copies of deeds and information relating to properties and bank accounts owned by the deceased. She confirmed that the reason why the Will was hand-written by her as opposed to being typed was due to time constraints. She further testified that she and

Haynes witnessed the deceased execute the Will after the deceased read and approved same and that she and Haynes signed the Will thereafter as witnesses in the presence of the deceased and each other.

63. In relation to allegations of the deceased not having children, Ms. Lutchman would not have been in a position to verify whether the deceased had children or not. She admitted during cross-examination that she did not check to see if the beneficiaries named in the Will existed, however, she was not duty bound to so do. Her main duty was to take instructions from the deceased, prepare her Will as per those instructions and witness the execution of same.

64. During cross-examination, Ms. Lutchman testified that the Will of the deceased did not include a clause that speaks to the soundness of mind and body of the testator because she did not have any concerns about the deceased's soundness of mind and that the deceased did not appear ill to her.

65. The court finds that the evidence of Ms. Lutchman proves that the Will was executed by the deceased and that the Will was validly executed in accordance with the Wills and Probate Act. Ms. Lutchman's evidence also disproves the defendant's allegation that the deceased lacked knowledge and approval of the contents of the Will. No issue of testamentary capacity was raised by the defendant.

66. As such, the court finds that the defendant did not discharge the burden to prove that the last Will of the deceased was not duly executed. Consequently, the court finds that the Will was properly executed and that it expresses the deceased's true Will and intention. The court will therefore pronounce in favour of the Will and order that the application of the defendant for a grant of letters of administration of the estate of the deceased be dismissed.

**Issue 2** - *whether the defendant has acquired an equitable interest in the matrimonial home and the properties*

## Law

67. An estoppel may arise where a property owner makes a representation to another party which is relied on by that other party and which leads that other party to act to their detriment. The representation usually relates to the current or future ownership of land or of interests in land. If the party to whom the representation has been made acts to their detriment in reliance on that representation, the representation cannot be revoked and the courts will enforce it despite the lack of a written agreement: **Halsbury's Laws of England Volume 23 (2013) paragraph 153.**

68. Rajkumar J in **Fulchan v Fulchan**<sup>3</sup> defined promissory estoppel and proprietary estoppel as follows:

### *“11. Promissory Estoppel*

*Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise ) or was reasonably understood by the other party to have that effect , and , before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it emphasis mine ” Snell’s Equity 31st ed. 2005 Para 10-08.*

### *13. Proprietary Estoppel*

*If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land , a court of Equity will compel B to give effect to such expectation.” Taylor Fashions Ltd. v Liverpool Victoria Trustee Co. Ltd. Per Oliver J. cited in Snell’s Principles of Equity 31st Ed. Para 10-16 to 10-17”*

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<sup>3</sup> CV 2010-03575 at paragraphs 11 & 13

## **Analysis and findings**

69. Upon an analysis of the evidence, the court finds that the defendant has failed outright to establish that he has acquired an equitable interest in the matrimonial house and the properties. There must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect.<sup>4</sup> It is therefore the defendant's evidence that is important in this regard.
70. The defendant did not lead any evidence that 1) the deceased made a representation or assurance to him that he would obtain an interest in the matrimonial home and the properties, 2) that he relied on the representation or assurance; and 3) that he incurred some detriment as a consequence of that reliance.
71. The defendant testified that he and the deceased during their marriage invested in the renovation of the matrimonial home. He further testified that he and the deceased purchased the lands described in the 2007, 2008 and 2009 deeds and that they used his gratuity and retirement lump sum to build dwellings houses on the lands ("the properties"). That he relied on the assurance of the deceased that the matrimonial home and the properties belonged to them to his detriment.
72. The defendant has not produced any pay slips, bank statements and/or any statement from his former employer to prove to this court that he did in fact work for the sums he alleged and that he did receive a gratuity in the sum of \$325,000.00. Further, the defendant has not told this court the amount of money he expended on renovating the matrimonial home and/or when such renovation took place. Moreover, the defendant failed to provide any evidence as to how much money he allegedly expended on the acquisition and improvement of the properties.
73. During cross-examination, when asked if he questioned the deceased when he realized that the 2007, 2008 and 2009 deeds were executed in the deceased's name alone, the defendant

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<sup>4</sup> See *Snell's Principles of Equity, 31st Edition, 2005, paragraph 10-08*

testified that he did not because he was the perfect husband. This explanation in the court's view was a nonsensical one as common sense would dictate that if one is providing funds to purchase property, it is highly likely that he would attempt to ensure that his investment is secured by the addition of his name to the deed. The court does however accept that in the business of human affairs between a man and his wife, nearly all things are possible. This is why it was incumbent on the defendant to provide at least some sort of proof of what he alleged. But he failed manifestly so to do.

74. The court therefore finds that the defendant did not acquire an equitable interest in the properties.

### **Disposition**

75. The court will therefore make the following order;

- i. It is declared that the last Will and testament of Carol Austin Wilson-Urquhart also called Carol A. Austin Wilson-Urquhart also called Carol Austin Wilson also called Carol Austin Wilson Urquhart ("the deceased") executed on the 28<sup>th</sup> May, 2010 is valid and is hereby proven.
- ii. The application of the defendant for a grant of letters of administration in respect of the estate of the deceased No. L 1546 of 2015 dated the 25<sup>th</sup> June, 2015 is dismissed.
- iii. The Registrar of the Supreme Court shall issue a grant of probate to the claimant upon the filing into court of an inventory of assets and liabilities of the estate and the payment of all of the required fees.
- iv. The defendant shall give an account to the claimant as executrix of the estate of the deceased for all the rent collected from the rental of the properties from the date of death of the deceased to the date of provision of the account.
- v. The counterclaim is dismissed.

- vi. The defendant shall pay to the claimant the prescribed costs of the claim in the sum of \$14,000.00.
- vii. The defendant shall pay to the claimant the prescribed costs of the counterclaim in the sum of \$14,000.00

Dated the 16<sup>th</sup> day of October, 2018

Ricky Rahim  
Judge