

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2018-00777

Between

**JENNIFER CAMPBELL**

Claimant

And

**SYLVESTER VIGIL CAMPBELL**

First defendant

**AUGUSTA CAMPBELL-MARTIN**

Second defendant

**MAGDALENE CAMPBELL**

Third defendant

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

Date of Delivery: November 1, 2019

Appearances:

Claimant: Ms. N. Khan

First and Second defendants: Ms. R. Joseph instructed by Ms. K. Peters

## JUDGMENT

1. This claim concerns the validity of the purported Last Will and Testament executed on June 2, 2011 by Theresa Campbell (“the deceased”) who died on February 8, 2012. The claimant, Jennifer Campbell (“Jennifer”) and the defendants; Sylvester Vigil Campbell (“Sylvester”), Augusta Campbell-Martin (“Augusta”) and Magdalene Campbell (“Magdalene”) are siblings. The deceased was their mother. By Order dated January 26, 2018 Jennifer was appointed the administrator ad litem for the estate of the deceased. By Notice filed on December 7, 2018 Magdalene notified the court that she had no intention of defending the claim.
  
2. The defendants aver that the purported will is invalid and that the deceased lacked the requisite compos mentis and animus testandi to publish same. According to the defendants, at the material time the deceased was bedridden, blind and deaf and as such it was impossible for her to be taken anywhere to execute a will or to have the purported will read to her for her to have understood and/or executed same.
  
3. The defendants further aver that it was unlikely that the deceased was aware that it was a will that she was executing as during the time the claimant cared for her, the claimant purchased an ink stamp pad to print the thumbprint of the deceased on her pension cheque in order to cash same.

## ISSUE

4. The issues to be determined by this court are as follows;
  - i. Whether the purported will of the deceased was validly executed in accordance with the Wills and Probate Act, Chapter 9:03;

- ii. Whether the deceased knew and approved of the contents of the purported will; and
- iii. Whether the deceased possessed the testamentary capacity to execute the purported will.

### **THE CASE FOR THE CLAIMANT**

5. Jennifer gave evidence for herself. She is unemployed. She testified that by the purported will, she along with Magdalene were appointed as joint executrices.<sup>1</sup> However upon review of the will, the court observes that to the contrary, Jennifer alone was appointed as executrix of the purported will.
6. The deceased purported to bequeath to Jennifer and Magdalene the following among other things;
  - i. A dwelling house consisting of a wooden and concrete structure covered with galvanize iron sheets and the tenancy rights to the parcel of state lands upon which the house was built (“the subject property”). The parcel of land is situate at #178m.m. Guayaguayare Road, Rio Claro.
  - ii. The tenancy rights to a parcel of state lands comprising approximately 15 acres situate at 1- ¼m.m. Guayaguayare Road, Rio Claro containing mixed cultivation of coffee, bananas and other agricultural crops (“the agricultural lands”).
7. Jennifer testified that in or around May 30, 2011 Sylvester asked her to stay at the subject property. Jennifer informed Sylvester that he could stay at the subject property for two months until he got back on his feet.

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<sup>1</sup> A copy of the will was annexed to Jennifer’s witness statement at “J.C.2”.

8. Jennifer's son, Mark Campbell ("Mark") had partially constructed a room at the subject property and same would have been completed in or around August, 2011. Jennifer asked Mark if Sylvester could stay in the partially constructed room until he (Sylvester) was once more financially stable. Mark agreed that Sylvester could stay until August, 2011.
9. In August, 2011 Sylvester was still occupying the room despite Mark demanding that he leave so that construction could resume. Sylvester asked to stay on longer. Jennifer testified that the aforementioned was discussed and that it was agreed that Sylvester could occupy the shed where there was a small laundry area at the back of the house. According to Jennifer, the shed was enclosed using materials that were purchased by Mark to finish the construction of his room.
10. In or around October or November, 2011 Sylvester brought a lady to live at the subject property with him along with two children without permission.
11. After the deceased died, Sylvester began making threats towards her and refused to leave the subject property as was previously agreed. Jennifer even showed Sylvester the deceased's purported will in which she gave the subject property to Magdalene and her. Sylvester however went on to extend his occupation by constructing additions to the laundry room/shed.
12. At that time, Jennifer retained Mr. Ashton Dinananth, Attorney-at-law who by letter dated July 13, 2012 wrote to Sylvester demanding that he immediately desist from building any structure on the land and he

informed Sylvester of the deceased's purported will.<sup>2</sup> Notwithstanding Mr. Dinananth's letter, Sylvester continued to occupy that part of the house.

13. Jennifer testified that she was unable to take further action at that time. That there were periods of peace interrupted by outbursts of threats and violence from Sylvester accompanied by statements to the effect that he was not leaving the home. By March 17, 2014 Sylvester had made Jennifer's occupation of the house unbearable and quite impossible as he blocked off the bathroom facilities. Jennifer had no choice but to use a neighbour's bathroom.
14. On March 29, 2014 Jennifer was admitted to the Sangre Grande Hospital where she spent two months having done surgery on her left knee for arthritis and having been she was kept her for observation and/or treatment thereafter. Three surgeries were performed on her while she was there.
15. She was finally released from hospital on May 27, 2014. However, as Sylvester had made living at the subject property inconvenient and uncomfortable, she was forced to move into an apartment as she could no longer make the extended trip to the neighbour's house to use the bathroom. As she required extra care, Mark moved into the apartment with her.
16. On February 2, 2015 Jennifer was granted a Legal Aid lawyer to apply for the grant of probate of the purported will. She thereafter met with Ms. Khan and gave her instructions to begin the application. On September 14, 2015 the application for the grant of probate was filed.<sup>3</sup> A few months

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<sup>2</sup> A copy of Mr. Dinananth's letter was annexed to Jennifer witness statement at "J.C.4".

<sup>3</sup> A copy of the application for grant of probate was annexed to Jennifer's witness statement at "J.C.5".

thereafter, Ms. Khan informed her that there were queries to be answered.

17. By letter dated October 20, 2015 from Mr. Dave Maharaj Attorney-at-law, Jennifer was informed that a caveat was filed on October 14, 2015 on behalf of Sylvester.<sup>4</sup> A warning to the caveat was filed on December 14, 2015.<sup>5</sup> However, despite her attorney's attempts to serve the warning on Sylvester's attorney same could not be done as the office was consistently closed.
18. The caveat dated October 14, 2015 expired on April 15, 2016. The warning was eventually served on Sylvester's attorney on June 15, 2016. Without filing any action, Sylvester once more filed a caveat on July 14, 2016. Jennifer was not served with the caveat and only came to know of same when her attorney informed her of it. No appearance to the warning was filed.<sup>6</sup>
19. In late 2015, Jennifer learnt that Sylvester had slowly begun construction. She asked Mark to take photographs of Sylvester's construction which he (Mark) did.
20. Thereafter, Jennifer consulted with her attorney and subsequently applied for her Legal Aid certificate to be extended to an injunction to prevent Sylvester from continuing construction. She testified that the first matter that was filed on April 13, 2017 had to be withdrawn as her attorney had made a procedural error with the case.<sup>7</sup>

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<sup>4</sup> A copy of the letter was annexed to Jennifer's witness statement at "J.C.6".

<sup>5</sup> A copy of the warning filed was annexed to Jennifer's witness statement at "J.C.7".

<sup>6</sup> A copy of search results was annexed to Jennifer's witness statement at "J.C.8".

<sup>7</sup> A copy of the notice of withdrawal filed on September 15, 2017 and Order dated October 20, 2017 was annexed to Jennifer's witness statement at "J.C.9".

21. According to Jennifer, after the first action was withdrawn Sylvester stopped construction on the house so that an injunction was no longer necessary.
22. On December 15, 2017 a change of attorney and a notice of appointment along with an appearance to Jennifer's warning was filed by Sylvester's new lawyer, Ms. Renee Joseph ("Ms. Joseph").<sup>8</sup>
23. Jennifer testified that in January, 2018 Sylvester began construction once more. Consequently, she instructed her attorney to initiate these proceedings.
24. Jennifer obtained receipts issued to Sylvester by his previous landlord, Daphnie Villarell for the rental of an apartment at bucket corner.<sup>9</sup> Jennifer was aware of the aforementioned because she was the person who found the apartment for Sylvester.
25. Jennifer testified that she read the defence wherein it was stated that the deceased was not mentally competent to make the purported will. As such, she obtained a medical report from Dr. Carl L. Ferdinand dated April 5, 2017.<sup>10</sup> That medical report provided as follows;

*"To whom it may concern. This certifies the above named was under my care from year 2001 till her death. During this time she was lucid and had full [sic] of her mental faculties until about twelve (12) hours before death. She would therefore had been quite capable of making her will in 2011 of her own free volition"*

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<sup>8</sup> A copy of the appearance to the warning was annexed to Jennifer's witness statement at "J.C.10".

<sup>9</sup> Copies of the receipts were annexed to Jennifer's witness statement at "J.C.11".

<sup>10</sup> This report was annexed to Jennifer's witness statement at "J.C.12".

26. Jennifer further testified that she intends to rely on the medical reports attached to the defence.<sup>11</sup> Those medicals were obtained by Sylvester from Dr. Kamaluddin Amin (“Dr. Amin”) and Dr. Ferdinand. Dr. Amin’s report which was dated April 26, 2018 provided as follows;

*“This to state Ms Theresa Campbell of #178 Guayaguayare Road Rio Claro was a patient of mine, she visited my practice on 08/05/01 and 21/12/02. She suffered from Diabetes and Hypertension and was under my treatment. Otherwise she was in good mental health in my opinion.”*

27. Further, the medical report from Dr. Ferdinand which was dated April 26, 2016 provided as follows;

*“Date of death – 8<sup>th</sup> February 2012*

*To whom it may concern. This certifies that I saw the above named on a few occasions between the years of 2009 and leading up to her death. She suffered from diabetes and hypertension for which she was on oral medication. This information is strictly from memory as these were home visits for which I kept no files.”*

#### The cross examination of Jennifer

28. Jennifer denied that she returned to live at the subject property in 2004. She testified that she returned to live at the subject property on August 31, 2001. She accepted that prior to 2001, she was a resident of Tobago. That her sons were also a resident of Tobago. Mark moved to Trinidad with her. Her younger son stayed in Tobago and as such, she travelled back and forth between Trinidad and Tobago to care for him.

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<sup>11</sup> Copies of those medical reports were also annexed to Jennifer’s witness statement at “J.C.13”.



29. Jennifer denied asking Augusta for permission to add an extension onto the main house. She also denied having knowledge that Augusta signed a letter of permission for her to add the extension. Further, she denied telling Augusta when she moved in at the subject property that she (Jennifer) came there for her share. Moreover, Jennifer denied having knowledge that Augusta was the person the deceased relied on to conduct her financial, legal and other business.

30. When Jennifer returned to the subject property in 2001, she conducted the financial affairs of the deceased. Her name was on the deceased's bank account. Jennifer cashed the deceased pension cheques for her. To do the aforementioned, Jennifer would place the deceased's thumb print on her pension cheque using a stamp pad she (Jennifer) had at the home. As such, Jennifer agreed that she would place the deceased's thumb print on her pension cheque at the start of every month and go to the bank to cash same. She further agreed that when the deceased's thumb print did not come out properly, she would have to do it over again on the pension cheque. After cashing the cheque, Jennifer would purchase groceries for the deceased. Notwithstanding the aforementioned, Jennifer testified that the deceased was able to do everything but that she was just a little weak due to her age.

31. Further, when she returned to the subject property, the house only consisted of two rooms. She moved into the two rooms. She accepted that the house was owned by the deceased. She testified that it was she, Magdalene and Sylvester who had renovated the house. That Augusta was not involved in the renovation of the house. Sylvester provided the physical labour for the renovation of the house. He did not contribute

financially towards the renovations. He however was not paid for his labour.

32. Mark erected a room to the side of the house. It was Mark's intention to live at that portion of the subject property. At one point in time, Mark and his girlfriend were living at that portion of the subject property. Jennifer testified that it was her desire for Mark to continue to occupy that portion of the subject property. Jennifer denied that Mark needed the permission of the deceased to build on the subject property. She testified that as she was at the subject property, Mark told her that he wanted a space of his own.

33. According to Jennifer, Sylvester asked her to return to live at the subject property in 2011 because he could not afford to rent anymore. She denied that Sylvester returned to the subject property in 2009. She further denied that when Sylvester returned to live at the subject property, he moved into the back of the house. She reiterated that Sylvester moved into the room that was being built by Mark at the side of the house. Jennifer agreed that the rental receipts she obtained from Sylvester's former landlord were dated 2008 and 2009. She further agreed that she did not provide any receipts for 2010 and 2011.

34. Jennifer agreed that she did not provide any receipts for the materials that she claims were purchased by Mark for the construction of his room but which were used by Sylvester to enclose the shed to the back of the house. She testified that those receipts were left at the house and that since she left the house on January 8, 2015 she did not return because she did not have access to the house. She further testified that she avoided returning to the subject property to circumvent any confrontation. That when Mark

returned to the subject property to take photographs of the construction Sylvester was conducting, he (Mark) was accompanied by the police.

35. Jennifer testified that she did make a report to the police when Sylvester was making threats towards her. That she has the receipt for that report but she did not exhibit same because she did not know she had to.

36. Jennifer denied that she stopped her family from entering the house freely. She further denied stopping her family from entering the bedroom of the house and using the television and small appliances.

37. Jennifer denied that she moved into an apartment with her husband as she does not have a husband.

38. She testified that she did not know that the lady who Sylvester brought to live at the subject property with him in 2011 was Mala Campbell ("Mala") his common law wife at the time. She further testified that she did not know that the two children were Sylvester's children. Jennifer's daughter died on January 15, 2011. She denied that Mala, Augusta and her siblings threw a birthday party for her in 2011 to cheer her up after the death of her daughter.

39. Jennifer admitted that she was aware that in 2014 Sylvester had a newborn son living at the subject property. She agreed that she had heard that the child was sick. She however, denied that she received a letter dated April 20, 2014 from Sylvester informing her that the child was sick.

40. Jennifer was referred to Dr. Ferdinand's medical reports dated April 5, 2017 and April 26, 2016. She denied that she told Dr. Ferdinand what to write in the report dated April 5, 2017. She further denied that Dr. Ferdinand was not a regular visitor at the house. She testified that Dr.

Ferdinand was the deceased's doctor from 2001 and that she used to ask him to visit the home when it was difficult to get transport to go to the health centre. As such, it was her testimony that Dr. Ferdinand visited the home every month. Jennifer further denied that she used to call Dr. Ferdinand over the phone to ask him to re-fill the deceased's medication.

41. According to Jennifer, on the date of the deceased's death she called Dr. Ferdinand and a sister from the church at around 11:00 a.m. to come to the home. Dr. Ferdinand examined the deceased and the sister gave the deceased communion. The deceased passed away around 7:00pm. Jennifer denied calling in the deceased's death and having Dr. Ferdinand sign the death certificate.
42. The deceased and her mother slept in the same room. Jennifer denied that when the deceased's mother died, she and her siblings had to have the deceased feel her mother's feet for her (the deceased) to know that her mother died. She further denied that the deceased was deaf when her mother died.
43. Jennifer showed the purported will of the deceased to Sylvester in 2012. She denied that the deceased was deaf, blind and had no capacity to execute the purported will.
44. According to Jennifer, the deceased informed her that she wanted to visit the offices of Elsa Persad Jagroop ("Jagroop"). Jagroop, a Commissioner of Affidavit was the person who prepared the purported will. As such, Jennifer contacted Jagroop and informed her that the deceased wanted to visit her. Jennifer hired a car to take the deceased's to the office of Jagroop which was located to the front of her (Jagroop's) home in Gunapo

Settlement, Rio Claro. Jagroop had another office but Jennifer took the deceased to Jagroop's home office.

45. When they arrived at the office, Jennifer assisted the deceased to go into the office but she (Jennifer) did not accompany the deceased into the office. It was the testimony of Jennifer that she remained outside whilst the deceased went into the office to execute the purported will. Jennifer denied giving instructions to Jagroop for the preparation of the will.

46. Jennifer testified that because she was hospitalized, there was a delay in making the application for a legal aid attorney to apply for the grant of probate of the purported will of the deceased.

47. Finally, she sent letter dated July 13, 2012 (which called upon Sylvester to desist from construction) to Sylvester because she had heard him saying that he was going to renovate the house. As such, it was Jennifer's testimony that when she sent the aforementioned letter, Sylvester had not begun construction.

### **THE CASE FOR THE DEFENDANTS**

48. The defendants called four witness; Sylvester, Augusta, Kesta Campbell ("Kesta") and Mala Campbell ("Mala").

#### **The evidence of Sylvester**

49. Sylvester is a construction worker. He testified that he has lived at the subject property for the majority of his life. That he initially lived there with the deceased and her mother and took care of the home.

50. In or around 2001, Sylvester and his siblings decided to make the deceased's space more comfortable since it was badly dilapidated and since they realized that the deceased's mother was deteriorating in health. While the deceased and her mother slept on a bed, Sylvester slept on the floor. He testified that there were pans hanging around the roof to collect water from various leaks. Consequently, Magdalene and Sylvester pooled monies together from their incomes and from the deceased and her mother's pensions and began to renovate primarily the front portion of the subject property for them to inhabit.

51. Sylvester erected a 36 feet by 15 feet structure for them to reside in. That includes the majority of where Jennifer now occupies. Sylvester provided the labour for the house since he does construction for a living. He testified that Jennifer did not make any contribution towards the renovations as she did not live at the subject property during that time.

52. In or around 2004, Sylvester moved out of the subject property as he had met his wife and had decided that it was time to find his own way as a man. He testified that Jennifer came from Tobago in 2004 to live at the subject property which was around the same time he had moved out.

53. Sylvester has a cleaning company which was registered in 2007.<sup>12</sup> Though he moved out of the subject property, he still spent nights and numerous weekends there as he would often go to clean the home, perform various responsibilities as the man of the house and for special occasions such as birthdays and Mother's day. He did not move very far away and as such, it

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<sup>12</sup> A copy of the registration documents for the company was annexed to his witness statement at "A".

was very easy for him to go and come from the subject property. Several of his personal items remained at the property to facilitate his visits.

54. In 2009, Sylvester began to experience financial difficulties. His company had experienced a robbery of the sum of \$24,000.00 and some of his tools. Consequently, persons became disenchanted and the company eventually went bankrupt. As a result, Sylvester could no longer afford to rent and so asked the deceased and her mother in the presence of Augusta if he could return to the subject property. He obtained permission to return to the property to live with his family for an indefinite period. He also received permission to erect an extension to the back of the house so that he would be nearby but still enjoy some privacy.

55. Consequently, Sylvester, his wife, Mala and two daughters returned to the subject property. Upon moving back to the property, Sylvester observed that Jennifer had at some point in time also built a small wooden structure to the side of the main house that he had erected to dwell. He testified that they all lived peaceably, each in his/her little portion. They all shared the kitchen, toilets and bathrooms and the living room area.

56. However, conflict arose after the deceased passed away in 2012 and Sylvester decided to convert his wooden portion at the back of the main house into a concrete structure. That was the first junction at which Jennifer began making claims that the deceased had left the subject property to her and as such he (Sylvester) could not complete the conversion.

57. Sylvester advised his siblings of the claim since the deceased has five children who were alive; Augusta, Jennifer, Magdalene, Joseph and he. He testified that it had always been the deceased's representation to him and

his siblings that she had intended for the house to be a family home for her children. As such, he testified that it was incredible to him and his siblings that the deceased would choose to leave the property for only two of her children to inherit, particularly since Augusta continued to care for the deceased and he was the son nearby who would run errands for her and treat with all the tasks that required muscle.

58. According to Sylvester, Jennifer was the deceased's caretaker for a brief period when she was unemployed. Augusta and the other siblings would visit to take care of the deceased whenever Jennifer had to go out to conduct business. Mala was generally responsible for preparing the deceased's meals. As such, everyone did what they could to care for the deceased during her illness and more so when she became bedridden.

59. Further, Sylvester and his siblings also believed that the deceased could not have possessed any intention to devise the lands to Jennifer since the lands are State lands. Sylvester testified that although the full expanse of the property is fifteen acres, the portion which they occupy is approximately five acres, which was to the back of the Brick Factory, Rio Claro Industries that closed down in or around 1996. Various families, including Sylvester's planted on portions of the lands in the vicinity where the factory had operated.

60. Sylvester's family planted coffee. They did not however possess any title document for the lands. In or around the year 2000, Augusta with the deceased's permission applied to the Land Settlement Agency to obtain a Deed of Comfort for the property.<sup>13</sup> The Deed of Comfort has not yet been acquired. As such, Sylvester testified that the lands did not belong to the deceased for her to bequeath same via a will. Sylvester further testified

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<sup>13</sup> The application was annexed to Sylvester's witness statement at "B".



that he and his siblings believed that by giving Augusta permission to make the aforementioned application, the deceased intended that Augusta would oversee the property for the benefit of all.

61. Sylvester testified that it was unlikely that the deceased knew that it was a will that she was executing. That during the time that Jennifer cared for the deceased, she (Jennifer) purchased an ink stamp pad to print the deceased's thumbprint on her pension cheque in order to cash same. Sylvester and his siblings did not object to the aforementioned since the deceased was bedridden and same was convenient for Jennifer to do so that she could have access to the deceased's pension funds to care for her. The deceased had therefore gotten into the habit of having her finger taken to print her thumbprint when necessary. As such, Sylvester testified that he does not believe that the deceased knew it was a will she was executing particularly at the date of execution on June 2, 2011 which was around the usual time/date that Jennifer would have the deceased stamp her pension cheques.

62. According to Sylvester, the deceased was bedridden, blind and deaf at the time Jennifer professes that the purported will was executed. Consequently, Sylvester testified that it was impossible for the deceased to be taken anywhere to execute a will or to have the purported will read to her for her to understand and execute same. At the material time, the deceased's doctor made house visits to treat her since she was too weak and frail to venture out. The deceased had two main doctors during the period of illness; Dr. Amin and Dr. Ferdinand.<sup>14</sup>

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<sup>14</sup> Copies of the medical statements from those doctors were annexed to Sylvester's witness statement at "C".

63. Initially, Dr. Amin would attend to the deceased and treat her with drips to moderate her blood sugar and blood pressure. That was around 2001 to 2002. At that time, she was still mobile and would move around somewhat. Dr. Ferdinand later began tending to her. However, due to the fact that he was a Seventh-day Adventist and therefore did not work on a Saturday, Dr. Amin was called upon when a Saturday visit was required.
64. The deceased was initially mobile but by late 2009, she was sight impaired, deaf and fully bedridden. Consequently, during his visits, Dr. Ferdinand would examine her for bed sores and issue vitamins and medication as necessary. The deceased identified Dr. Ferdinand because he always played with a mole that she had on her upper left forearm. Once he touched her there, she would know it was him and would start to tell him where she was feeling pain and discomfort so he would treat her accordingly.
65. Dr. Ferdinand's visits were not frequent between the period of 2009 until the deceased's death. He would visit twice for the year unless there was an emergency. On one occasion when Sylvester was home alone with the deceased, she went unconscious and her eyes began to turn up into her head. Sylvester called Dr. Ferdinand and he administered an injection to her. By the next morning, when Jennifer returned home after a night out, the deceased seemed better. As the deceased had messed herself, Sylvester was in the process of doing the laundry and he explained to Jennifer what had transpired.
66. Sylvester testified that he observed that the medical statement furnished to him by Dr. Ferdinand is dated April 26, 2016. However, the statement was received on April 26, 2018 since the Defence was due on April 27, 2018. Sylvester further testified that he had great difficulty sourcing the

medical from Dr. Ferdinand. That initially, Dr. Ferdinand had voluntarily expressed his willingness to complete same during the month of March, 2018. However, upon Sylvester's return to collect same in or around April, 2018 Dr. Ferdinand had changed his mind and did not wish to have any dealings with the court matter since he had been involved in proceedings before and attorneys had embarrassed and belittled him.

67. Sylvester was upset by that development since he had relied on Dr. Ferdinand's assurance to provide the deceased's medical records. When Sylvester expressed the aforementioned to Dr. Ferdinand, he indicated that he had no written records for the time he treated the deceased and hastily scribbled the said medical note based on what he recollected from his memory.

68. The deceased's mother died at or around late 2009. The deceased and her mother shared a room and slept on beds which were side by side. When her mother died, Sylvester and his siblings lifted the deceased and took her to feel her mother's foot. When the deceased felt the coldness and clamminess of the skin, she began to bawl and shake her mother. That was how she knew that her mother had passed. Sylvester testified that after the death of her mother, the deceased was not the same. That the deceased became quieter and more withdrawn. Sometimes, they would see the deceased crying so they knew she was grieving. They however could not say anything to console her because she would not recognize what they would be saying. Sylvester testified that it was a very difficult time and that eventually, the deceased's coherence in speech also started to go and come and she was unable to carry a full conversation.

69. When Magdalene visited during the deceased's illness, she would sit on a cloth and would not eat unless she cooked. Magdalene also does not permit the family to touch her.

70. Upon becoming aware of what Jennifer had done and was purporting to do, Sylvester instructed his then attorney, Mr. Maharaj to file a caveat against the application. Mr. Maharaj also wrote correspondence on Sylvester's behalf to the various attorneys that Jennifer had retained.<sup>15</sup> As Mr. Maharaj began experiencing medical complications and was unable to act as required in respect of the commencement of contentious probate proceedings, Sylvester subsequently secured alternative legal counsel. The various legal instruments objecting to the deceased's purported will were therefore filed by Sylvester's present attorney.

71. Sylvester testified that he firmly believes that Jennifer was adequately compensated through funds received from the deceased's Indemnity plan, the Indianwalk Death Benevolence Society, the Social Welfare Grant and the Burial Grant. That quiet strangely, all proceeds and benefits from those different enterprises went to Jennifer. Sylvester and his siblings were very upset when they discovered the aforementioned and they did let Jennifer know their opinions on what they believed she had done. However, once things had settled down after the deceased's death, life continued. None of the siblings or Sylvester bothered to take any action against Jennifer.

72. According to Sylvester, the subject property is simple. It is not much as they are people of simple means. Everyone has their room and Sylvester seeks to do what is necessary to avoid the property from falling into disrepair. He testified that he really cannot understand why Jennifer is contesting the

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<sup>15</sup> Copies of the legal correspondence exchanged between Sylvester's attorney and the attorneys for Jennifer were annexed to Sylvester's witness statement at "D".

property and creating this conflict within the family since she became aware of what the deceased's last wishes were during a meeting the deceased held with her, Augusta and Magdalene.

73. According to Sylvester, he is a peaceful, Christian man and do not desire conflict. He believes that they could each have their portion and dwell peaceably at the property. He testified that he is a stranger to any outburst referred to by Jennifer. That when Jennifer and her son began playing loud music during late hours of the night which affected the health of his new born son rather than confronting Jennifer on the issue, Sylvester wrote to Jennifer requesting that they desist from same.<sup>16</sup>

74. Sylvester testified that he has no intention of taking over the property. That he simply desires to dwell in a presentable house and that anyone can see from the pictures attached to the Statement of Case that the house is in desperate need of repair. Sylvester further testified that Jennifer does not live at the property so she is not affected by the condition of the house. That whilst Jennifer and her son have alternative accommodation with her husband, Hensley Alexander ("Hensley") who lives a short distance away, they have nowhere else to go.

75. Sylvester testified that he firmly believes that it was the deceased's intention for the house to remain a family home and that he does not believe that Jennifer should be made to disinherit his siblings and him from the only home they have ever known.

#### The cross-examination of Sylvester

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<sup>16</sup> A copy of the letter together with the medical statement about the condition of Sylvester's newborn son was annexed to his witness statement at "E".

76. According to Sylvester, the deceased's blindness was gradual. Around 2005 and 2006, she began complaining that she could not make out people and in 2009 she was unable to see anything. The deceased's deafness was also a progressive ailment. Sylvester and his siblings began speaking louder to her until late 2009 when they could no longer communicate with her. She was bedridden in late 2010.

77. Prior to 2009, Sylvester lived at the subject property for periods of time. Augusta never lived at the subject property.

78. In 2001 when the decision was taken to renovate the house, the deceased and her mother had their own bank accounts and used to go to the bank to get their monies. The renovation of the house took about two and a half years because the money was coming in slowly.

79. When Sylvester returned to live at the subject property in 2009, Jennifer, Mala and Augusta cared for the deceased. Sylvester visited every day. He observed that the deceased would mess down herself at times. However, Mala never informed him that Jennifer had stop purchasing adult pampers for the deceased.

80. Sylvester agreed that he did not provide any medical evidence to show that the deceased was blind, deaf and bedridden.

#### The evidence of Augusta

81. Augusta is a housewife. She testified that she is the only child of the deceased with a School Leaving Certificate. That her siblings did not complete school. Their father passed away when she was ten years old and

as such, after leaving school, she did not further her education as she had to assist the deceased with the taking care of her younger siblings.

82. As the first child and the only one who could read fluently in the home at that time, the deceased often discussed financial and legal matters with Augusta and kept her abreast of all of the affairs of the home since she (Augusta) was responsible for what transpired in the home whenever the deceased was absent. The deceased also took Augusta unto the coffee fields with her and taught her (Augusta) all of her trade and affairs to be able to assist with the business and to be Mistress of the home should anything happen to the deceased. The deceased was illiterate and therefore all letters and correspondence were read and written by Augusta on behalf of the home. As such, Augusta was informed of and consulted with respect to any matter the deceased undertook which required literacy.

83. According to Augusta, the deceased did not put anything on paper and she (Augusta) became the official scribe/reader of the home. Whatever the deceased was required to sign, Augusta would read it to her and she would agree and place her thumbprint on same and Augusta would also sign as her witness. That continued throughout the years as even when the deceased went to sign for her pension at the Welfare Office on the Gunapo Southern Main Road in or around 1995 or 1996, Augusta went with her, filled out the form and had her affix her thumb print in the presence of the officer in charge at that time, Dot Descrates. Although Augusta had gotten married and moved away from the home, she would visit regularly to tend to the deceased's legal affairs. Augusta would stay a few days before going back home to Sangre Grande. That was their modus operandi.

84. During Augusta's visits to the subject property, she would take care of the deceased. That included preparing meals, giving her baths and being her companion. During that time, Sylvester lived with the deceased and her mother and would care for them during Augusta's absence.
85. In or around 2001, after Augusta's brother, Daniel passed away, the home was in a terrible state and as such Sylvester called the family together to effect repairs to the home. As Sylvester was a construction worker by trade, he informed them that he wished to use the deceased and her mother's pension funds to purchase material to renovate the home. Augusta testified that they all carried sand and cement and assisted Sylvester with the work. She further testified that Sylvester built the house which is presently there, save and except the part of the building which Jennifer added on when she moved back from Tobago in 2004.
86. When Jennifer decided that she was moving back home, she approached Augusta and asked for permission to add on the said extension to the main home as she had been aware that Augusta had applied for the Deed of Comfort for the land in 2000. Mr. Wahid Ali, deceased Commissioner of Affidavits had assisted Augusta with drafting the letter of permission for Jennifer to extend on what Sylvester had erected. As such, it was the testimony of Augusta that Jennifer was nowhere around when they completed the renovations in 2001 to make the home more comfortable for the deceased and her mother.
87. When the deceased first became ill, Augusta took her to Dr. Rampaul. At that time, the deceased was still mobile and just had diabetes and low blood pressure. After Daniel died in March, 2001 the deceased went into depression and her health began to rapidly deteriorate. When Augusta observed the aforementioned, she took the deceased to Dr. Amin as he



was closer to where they lived and the deceased's mobility was already decreasing. Dr. Amin diagnosed the deceased with depression and advised that they not let her become dependent upon them since she needed to remain active due to the chronic illness. Based on that advice, Augusta visited the subject property to take the deceased for walks, conduct her business and to cook her meals. During that time Sylvester and his son, Kesta stayed with the deceased and cared for her. They took turns caring for the deceased.

88. As time went on, Jennifer decided to return to Trinidad to work. Her son, Mark began staying with Sylvester as he had passed for Roxborough Composite but had obtained a transfer to Mayaro Composite. As such, Jennifer visited every fortnight to cast an eye on Mark. Kesta also attended Mayaro Composite, so he and Mark travelled to and from school together. When Jennifer first arrived, she got a job babysitting Augusta's niece, Natasha's children in Clever Road, Arima. Consequently, Jennifer stayed up there with them for the first six to eight months after her arrival as it was a live in position.

89. Jennifer later decided to move back home after she came one day and saw the deceased struggling to take out food to serve herself and her mother. Jennifer did not discuss moving in with anyone. Augusta had arrived for her usual visit and saw that Jennifer had moved in. When Augusta enquired into her occupation of the home, she told her that *"everybody had their share, so I come for mine!"* The aforementioned made Augusta feel quite upset since she had never seen their situation as having a share of anything as the deceased always wanted them to be treated equally and to care for each other in the home. As such, anyone who came found a safe haven in their home as the deceased had taught them.

90. Augusta testified that it was clear that Jennifer had come with an agenda, particularly after she told Augusta's son and his girlfriend that they had to leave. Kesta eventually moved out as the home was uncomfortable due to Jennifer's persistent questions such as *"how long you staying?"* and *"you spending the night?"*
91. The deceased's eyesight continued to deteriorate due to the diabetes. By or around 2004, Augusta realized that the deceased had gone blind. The deceased never wanted to make it obvious, however, one day Augusta observed the deceased going to light the stove and she was feeling around for the knob for the burner. Upon turning on the gas Augusta saw the deceased feel for the matches, strike the match and pass her hand over the stove until she heard the flame catch as though she did not know which burner she was lighting.
92. At that moment, Augusta recalled other instances when she observed the deceased making shorter steps with her foot raised higher as though she was unsure of where she was walking and feel for the edge of the bed and get up cautiously. Augusta also noticed that she would be feeling to walk around and whenever something was moved that she was dependent on, she would ask for it. That day, as Augusta watched her interact with the stove, she realized that the deceased was not seeing. From that day onward, they never left the deceased alone.
93. The deceased was not only a victim of blindness but also of silence. Old age and its degenerative effects took its toll upon the deceased. After Daniel died, she became withdrawn and began to speak less. As her limbs became weak, she became immobile and bedridden. As such, Augusta and her siblings had to do everything for the deceased on her bed. To change the sheet, they rolled her to one side, fixed that side of the bed, and then

rolled her to made side to fix the unmade side. Jennifer and Augusta enrolled in the Women in Harmony Elderly Care course in or around 2005 so that they could learn how to better take care of the deceased. Just about one year after her arrival, Jennifer had unilaterally taken over handling the deceased's financial affairs. Augusta and the other siblings never took same to be a problem as Jennifer was a member of the family and they were primarily concerned with the deceased's care.

94. By the time the deceased's mother died in 2010, the deceased was fully deaf. Rapid deterioration took place thereafter as all her life she had lived with her mother. The deceased went into a world of silence and would not communicate. Sometimes in silence, she would be seen wiping her eyes and emotions would be seen flit across her face. To communicate with her, Augusta and her siblings each had a special code so that the deceased would know which one of them she was dealing with. The codes were as follows;

- i. Jennifer would rub her cheek against the deceased's cheek;
- ii. Augusta would put her hand in the deceased's bosom;
- iii. Dr. Ferdinand who would visit the deceased every five to six months played with a mole on her upper left hand/elbow; and
- iv. Sylvester pinched the left side of her face under her jaw area.

95. Magdalene rarely visited as she does not interact much with the family. Augusta testified that as Magdalene is fairer and has straight hair, she does not associate much with them because they are darker in skin colour and poor. Nonetheless, Magdalene also had her code to interact with the deceased.

96. According to Augusta, it was difficult sometimes to communicate with the deceased. When the members of the church visited to give her communion, she would not be aware of what they were doing and would sometimes speak out of turn during the service as she could not hear what they were doing or saying. Augusta and her siblings would quiet her and when it was time to take communion, they placed the bread in her hand and put her hand to her mouth. That way she knew it was communion time. To drink the wine, Augusta and her siblings would put the glass to her lips and tip her head gently back so she would know it was time to drink. Someone always had to there to let her know that visitors arrived.

97. During the first week of June, 2011 Augusta received a call from Sylvester around 9:30 pm informing her that he had just seen Diane (the daughter of a close family friend) leave the home with some papers in her hand. When Augusta and her siblings questioned Jennifer about same, she informed them that Diane had needed a recommendation and that she had just come by to collect it. Augusta and her siblings found it suspicious that Diane, a school teacher would go to Jennifer, a babysitter for a recommendation at that hour of the night. They took notice of the event for future reference.

98. When Augusta saw the notice in the papers of an application being made by Jennifer for a grant of probate in the deceased's estate and called Sylvester to inform him of same, they verily formed the belief that that was what had transpired on the night in question. Augusta testified that the deceased was bedridden, deaf and blind. That she could not be carried out of the home to any Commissioner's office to execute a will. Additionally, the said location of the Commissioner's office in El Guayanapo was up a flight of stairs which the deceased would not have been able to climb.

Augusta further testified that even if the deceased had been taken to the office, she would not have read or heard the contents of any will.

99. According to Augusta, after Daniel died, she was present when the deceased had asked Sylvester to go with her to the bank to remove Daniel's name from her bank account and to add Sylvester's name instead so that he would have easy access to the monies to complete the renovation of the house which was being done little by little out-of-pocket. Augusta testified that Sylvester worked very hard to make the house into something more comfortable for the deceased and her mother. That Sylvester sometimes used his own funds when necessary because as a construction worker, he was determined to make the place decent.

100. At that time Sylvester had moved from the home to make his own way. When he went the following week to do as the deceased had requested, he learnt that Jennifer had taken the deceased to the bank the day before and put her name on both bank accounts to be able to access the deceased and her mother's pension easily to take care of them. Again, the aforementioned was not discussed with any other member of the family.

101. According to Augusta, Sylvester was the deceased's first born son. She testified that they were very close and that Sylvester would sleep on the bed with the deceased especially during the time when he went through his divorce with his first wife. Sylvester always had a gentle way with the deceased. He would play with the left side of her jaw and the deceased would light up and sit up eager to spend time with him. They had a special bond.

102. In or around March, 2008 the deceased called Magdalene, Jennifer and Augusta in the presence of the deceased's mother and charged Augusta

with the responsibility of keeping the family together and maintaining equity and fairness among the siblings as she (Augusta) was the eldest. Augusta testified that the deceased did not want the family to be divided and wanted the home to be a family home. She further testified that it was important to the deceased that they not leave Sylvester on the streets as he had nothing and needed a safe place to live. The deceased's mother further exhorted Augusta to do as the deceased had said.

103. Augusta testified that she took the aforementioned charge seriously. That it is saddening to her to know that Jennifer in her greed is driving the family apart as in her heart she knows that the deceased would not have wanted this. Augusta further testified that in light of all Jennifer has already inherited from the deceased's other death benefits, she believes that it is shameful that Jennifer would now come to seize the deceased's home, the one asset the deceased meant for all of them to share. Augusta emphatically stated that the purported will does not reflect the intentions of the deceased.

#### The cross-examination of Augusta

104. Augusta never lived at the subject property on a permanent basis. She was referred to her application for the Deed of Comfort. The application was made in Augusta's name and stated that she had been in occupation of the land since January 1, 1998. Augusta testified that the application was made in her name because there was no one else around to make the application. That she could not make the application in the deceased's name without the deceased being present.

105. According to Augusta, the deceased became bedridden after her mother died. That would have been in or around February or March, 2011. Augusta

agreed that she did not exhibit any medical evidence to show that the deceased was blind, deaf and bedridden.

106. Augusta testified that Mala never informed her that Jennifer was leaving the deceased without adult diapers.

#### The evidence of Mala

107. Mala is a housewife. She is the wife of Sylvester and the mother of his two daughters; Karanna Campbell (“Karanna”) who was born in 2006 and Kailea Campbell (“Kailea”) who was born in 2008. Mala has been around the Campbell family since 2004 when she commenced a common-law relationship with Sylvester. Sylvester and Mala got married on March 24, 2013. Some of her evidence was the same as the evidence given by Sylvester and Augusta and as such, there was no need to repeat same.

108. Mala testified that the family has always been one unit. That the deceased was the matriarch of the family and sought to ensure her children always looked out for each other and lived will together. When Mala first began living with Sylvester in 2004, they were not well off. As such, during the Christmas of the said year, Jennifer gave a gas tank to them as a Christmas present as they did not have one at the time. Jennifer brought them the gas tank on the boat from Tobago where she then lived.

109. Mala and Sylvester rented a place a little higher up the road from where the subject property is located but they often spent the night at the family home. The aforementioned occurred at least three times per week and on some occasions when Sylvester was needed, they would spend the entire week.

110. There was no objection to Mala staying at the home. She testified that throughout the years, she became an integral part of the family. That she cooked for the deceased and her mother and also completed their laundry since they were feeble and Jennifer worked during the day. Mala has always been a housewife so on most days, she would have been home with the deceased and her mother until the family arrived from work or school. Mala also cared for Jennifer's grandchild, Denzel during the illness of Jennifer's daughter, Melissa (now deceased).

111. When Melissa died in January, 2011 Sylvester, Mark and Mala planned a surprise birthday for Jennifer on her birthday on April 4, 2011 to help her overcome the grief of the passing of her daughter. Melissa had lived on the subject property in a room Jennifer had built for her adjoining the back of the house.

112. Mala and Magdalene had frequent conversations. Mala also had many interactions with the deceased. The deceased however never really knew Mala's features because by the time Mala entered the family in 2004, the deceased's vision was blurry. Mala would observe the deceased holding to the walls and partitions to walk about the home and the deceased was never without her walking stick. She would feel for her chair and once she realized it was hers, she would then sit. As a result of her blurred vision, the deceased identified Mala by her hair. Whenever Mala went to her, she would raise her hands to Mala's head, pass her fingers through her hair and say "*this is S-y's wife*". The deceased referred to Sylvester as S.Y.

113. During Mala's early interactions with the deceased, they would talk about the good old days when she picked coffee, worked on the cocoa land and made coals for fire. However, as the years went by, the deceased's health deteriorated until she was fully blind and bedridden. Mala continued to



care for the deceased during that time. When feeding the deceased, Mala would first hold her arms and lift her into a sitting position. Mala would then place her meals in a tray and put the tray on her lap so that she could eat. The deceased would feel for her teacup with her left hand and hold on to it for the entire time she ate. As such, Mala always placed her teacup on the left of the tray. The deceased never ate with a spoon. She would feed herself with her hand and she always asked for pepper sauce. She particularly enjoyed Mala's sada roti. Just about a week before she passed, Mala fed her fried rice and stewed chicken.

114. The deceased's deterioration did not only affect her sight and mobility but also her hearing and coherence. Well-wishers would visit on occasion and they would feel sorry to see how she looked then as compared to how they knew her to be. Visits were few and far between because of the deceased's sight and hearing. Her most frequent visitors were the Catholic sisters who came every Sunday to administer communion to her. They would visit, give the deceased communion and then pray with her. Once they arrived, one of the sisters would make the sign of the cross on the deceased's forehead and she would make the sign of the cross to begin the service and clasp her hands to pray.

115. Generally, one would have to speak to the deceased in a very loud manner because she could not hear when she was spoken to at regular volume even if the person was right in front of her. Sometimes Mala and the others would speak directly into her ears. The deceased also could not communicate well. Her speech was scattered and slow. She was not necessarily aware of what was happening around her because of her hearing. It was therefore very difficult to carry on continuous conversation with her. The deceased's would call out for whatever she needed and

when what she needed was taken to her, she would have to be guided to it.

116. Mala testified that any prolonged interaction was hard. That if someone was talking about cricket, the deceased would blurt out some random name or fact or question. Even when the Catholic sisters visited, sometimes they would be praying and the deceased would say amen in the middle of the prayer and lay back down on the bed. When the sisters were leaving, they would tap the deceased on her shoulder so she would say bye. The deceased's communication was mainly by touch.

117. According to Mala, Augusta has always been the member of the family to hold things together. As the oldest child, Augusta's siblings would seek guidance from her whenever anything has to be done with the home or with the deceased. It was Augusta who consulted with the deceased and gave Sylvester permission to return home to live when he fell on difficult financial times. Mala testified that Augusta was the decision-maker for the family before and after Jennifer went to live at the home, a fact which Jennifer resented. Augusta however lived in Sangre Grande but she would visit the deceased and her mother once or twice every fortnight to ensure that everything was okay with them and that they had what they needed. Sometimes, she would leave instructions on what to do until her next visit.

118. When the deceased's mother died in or around 2009, the deceased was blind. The deceased's mother was strong for her age, her hearing sight and speech were all good. As such, she would talk a lot. Mala testified that given that the deceased and her mother shared a room, it was as though their spirits were connected. Mala further testified that she believes that the passing of the deceased's mother caused the deceased's rapid deterioration.

119. Mala testified that as a result of Augusta's distance, little by little, Jennifer began assuming day to day care of the deceased. Once that occurred, Jennifer began to push Mala away from caring for the deceased and would sometimes lock the door to the deceased's room so that no one could enter to check on her. As Jennifer had found that adult pampers were too expensive, she stopped purchasing same for the deceased. Consequently, the deceased would sometimes be dirty from excreting on herself. The aforementioned would upset Augusta when she visited and she would call Mala to help her change linens and to tidy up the deceased.

120. When Augusta was not there, Mala would still help with meals but Jennifer did not allow her to stay with the deceased. The aforementioned was because Jennifer who sometimes made racial remarks to Mala by calling her "*Coolie*" believed that as the deceased deteriorated, she (Mala) would have tried to obtain the deceased's property. As such, in the years before the deceased's death, Jennifer became quite antagonistic towards Mala. Jennifer would say that she despised "*coolie*" people and that "*coolie*" people were nasty and even accused Mala directly by saying to family members that "*coolie girl come to take what mother had*". Those remarks hurt Mala deeply since she had given so much to and for the family. Sylvester advised her not to take Jennifer on and that once Jennifer did not touch her, she could say what she wished.

121. According to Mala, Jennifer generally puts her own family ahead of everyone else. Jennifer is all for herself and her children and has always been skeptical of everyone trying to take the deceased's property. Mala testified that she does not believe that the deceased executed a will leaving everything to Jennifer. That at the time the purported will was executed, the deceased was blind, fully deaf and fully bedridden.

122. Mala does not recall anyone removing the deceased from the home to go anywhere during the last two to three years of her life. Mala testified that she does not believe that the aforementioned was even possible as the deceased would excrete on herself frequently during the day depending on how or what she ate. Mala further testified that if the deceased could not move to cash her own pension cheques every month, it was highly unlikely that she could have left home to execute a will, far more to make one.

#### The cross-examination of Mala

123. When Mala moved into the subject property in 2004, Jennifer, Mark, Melissa, the deceased and the deceased's mother were living there. According to Mala, the deceased's vision was blurry from 2004. In 2009, she became completely blind. Mala assisted in caring for the deceased. In 2009, when Jennifer was at work, Mala would take care of the deceased. After the deceased's mother died in 2010, Mala did not assist with the care of the deceased because Jennifer pushed her away.

124. When Mala moved into the property in 2004, Sylvester was chosen to go to Canada for a farming program. As such, Mala returned to her mother's home where she stayed for three months. When Sylvester returned, they rented an apartment and then returned to live at the subject property in 2009.

125. Mala testified that she informed Sylvester that Jennifer had stopped purchasing adult pampers for the deceased and that the deceased would sometimes be dirty from excreting on herself. That Sylvester in turn would

have informed Augusta. Augusta suggested to Jennifer that she should get a geriatric nurse to care for the deceased but that never materialized.

126. Jennifer stopped purchasing the adult pampers because she complained it was too expensive. Sylvester and Mala did not offer to purchase the diapers because the deceased was getting a pension.

127. According to Mala, the deceased was not dependent on insulin.

128. Neither Mala nor Sylvester called the police during the time Jennifer was excluding them from taking care of the deceased. That was because although Jennifer was caring for the deceased, Mala was still doing the laundry and cooking food and if the deceased called for her, she would still attend to her when Jennifer was not there.

#### The evidence of Kesta

129. Kesta is a Stock Attendant. He is the son of Sylvester and the grandson of the deceased. Some of his evidence was the same as the evidence given by Sylvester, Augusta and Mala and so there was no need to repeat that evidence.

130. During his primary school days, Kesta lived back and forth between Grant Street, Rio Claro and the subject property. That was because his uncle, Martin Campbell ("Martin") had suffered from a psychological breakdown and had a social disorder which caused him to lock himself in the house for extended periods of times. As everyone was away and/or busy at work, Kesta would go over to the subject property about three times a week, primarily Monday, Wednesday and Sunday to look after Martin and to cast an eye on the deceased and her mother. The aforementioned began just

before he sat Common Entrance which was around 1997 to 1998. Kesta's main duties were to purchase groceries and to run little errands for the household. Whenever he visited, he would overnight there and go to school from there the following morning.

131. The deceased and her mother were both old. The deceased eyes had begun to dim and so she could not see very well. She also was not very mobile so on some occasions Kesta would accompany her to conduct her business. He would hold her hand when crossing the street and help her get in and out of vehicles. Due to her decreased mobility, she walked very slowly.

132. When Martin died, Kesta began staying at the subject property four to five nights per week. That would have been between his junior years in high school. School dismissed at 2:30 pm and Kesta would arrive home by 3:30 pm every day to look after the deceased and her mother. Augusta would visit once per week, usually on a Wednesday to check to make sure the deceased was okay and that Kesta was taking good care of her. When she visited, Augusta would make a to-do list of errands for Kesta to complete for the deceased. Augusta would sometimes also cook.

133. The deceased eyesight continued to deteriorate over the years. Consequently, she began to identify Kesta by his size. He was always skinny so when he arrived, she would feel his arms and identify him as "*maga*". That was what she called him. She would also have him turn around to squeeze his buttocks and tease him that he was not putting on any flesh there and remained a bag of bones. The deceased and Kesta had a wonderful relationship and they would laugh about her teasing. Eventually, her hearing also deteriorated. Based on her rapid deterioration, they thought she would have passed before her mother.

134. Preceding the death of the deceased, Kesta began to visit less as he could not bear the thought and sight of her deterioration. He began visiting twice a month or less. Also at that time, some conflict arose among Sylvester and his siblings because Jennifer had come from Tobago to live at the subject property. When Jennifer had first come to live at the property around 2004, Kesta was living there. Mark who was around Kesta's age also lived there. Initially, everything was peaceful.

135. The deceased always thanked Kesta and said that she loved him the most. Sylvester and Kesta together with Augusta's sons; Joseph, Jevon and Rennie and Mala's brother, Mulchan Mootilal had renovated the house prior to Jennifer's arrival.

136. One day when Kesta went to visit the deceased at the house, he opened the door and entered and proceeded to the deceased's room. Jennifer came out and reprimanded him for going into the house without knocking. Kesta was taken aback and found that to be extremely strange since he had previously lived at the property. He was later advised by some other cousins that that had also occurred with them and that Jennifer was behaving as though the house was hers. The aforementioned incident in particular also contributed to Kesta's reduced visits.

137. A few months later, Kesta observed that Jennifer had without anyone's permission built a wooden structure adjoining the back of the house for Melissa and later a separate board structure to the right side of the house for Mark and his girlfriend to live in.

138. Within the last two years of her life, the deceased was bedridden. Kesta never took care of the deceased since she was female and he believed that

she should have been cared for by someone of the same sex. Kesta did not object to Dr. Ferdinand caring for her as he was a medical doctor.

139. Sylvester informed Kesta that the deceased would repeatedly call out his name at random moments, that he (Sylvester) believed that she was missing his (Kesta's) frequent visits and that he should drop by more often. As such, in the weeks preceding her death, Kesta began to drop by multiple times per week. By that time the deceased was fully blind and deaf. She had gone completely deaf approximately one year before she passed. Kesta testified that the deceased was fully down and that they knew that was the end. As such, almost everyone tried to visit as regularly as they could have.

140. Kesta testified that he does not believe that the deceased executed a will in June, 2011. That she would have been bedridden, blind and deaf at that time. Sometimes she would just call out a name or speak in a mumbled manner. They knew that she was about to leave them and they were prepared for it to happen at any time.

141. According to Kesta, the deceased repeatedly expressed her intention for everything to remain for everybody. She sang that song on many occasions to Kesta personally. She always wanted the property to be a family home. As such, Kesta testified that if the deceased did execute a will, she would not have left everybody out.

142. According to Kesta, everyone lived peaceably before and as such, he cannot understand why Jennifer is driving this rift in the family. He testified that it is difficult to see his family divided. That Sylvester has always been a peaceful man, who stands up for the right. He further testified that Jennifer has always solely sought to maintain control of the deceased's



funds to the ignorance of everyone else. That though un-approving, the family did not seek to create any issue over her conduct.

### The cross-examination of Kesta

143. According to Kesta, the deceased became totally blind in 2009. She became deaf a little thereafter. She was bedridden a little over a year prior to her death.

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

### Law

144. 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.

145. In **Marilyn Lucky v Maureen Elizabeth ThomasVaillo**,<sup>17</sup> Stollmeyer J (as he then was) summarized the applicable principles to due execution as follows;

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<sup>17</sup> H.C.A. No. CV 1396 of 1996

*“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 1 See Tristram and Cooté’s Probate Practice 30th Edition, page 813 paragraph 34.06 2 HCA 1398/ 1996, page 16 Page 15 of 22 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**

146. The onus of proving that the purported will of the deceased was executed as required by law lay with the claimant. This 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 testatrix. Further, it was not drawn by the person propounding it and benefiting under it. Consequently, the purported 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.

147. The court sets out the submissions of the defendant extensively in this regard as it accepts that reasonable suspicion has been raised in relation to the execution for the reasons set out by the defendant.

148. Firstly, the evidence during cross-examination revealed that upon arrival at the office of Jagroop, the claimant remained outside of the room whilst the deceased went into the office to execute the purported will. It follows that the claimant did not testify as to what if anything occurred within the room in relation to execution.

149. There are also minor matters which amount to irregularities. The handwriting of the name "Theresa Campbell" does not appear to be similar to that of either of the witnesses. The certainty of this is of course a matter for expert evidence but suffice it to say that was sufficient to excite the suspicion of the court. Further, the purported will refers to the driver's permit of the deceased but instead, the deceased's identification card number was inserted.

150. Additionally, the court considered that in the affidavit of due execution sworn to by Juanita Ramnanan (“Ramnanan”) in support of the application for the grant of probate the deponent deposed that the execution of the purported will took place at El Guayanapo, Rio Claro. During cross-examination, the claimant testified that she took the deceased to Jagroop’s home office to execute the purported will. It was therefore highly suspicious that the address in the affidavit of due execution did not match that stated on the purported will as being the address of Jagroop which was No. 1317 Tabaquite Road, Rio Claro. In the court’s view this evidence suggests to it that the evidence of execution may be unreliable.

151. The claimant submitted that while she did not call either of the witnesses to the purported will, the affidavit of due execution in support of the application for the grant of probate provides support of the due execution of the purported will. According to the claimant, the fact that Ramnanan, the maker of the affidavit was not called only affects the weight that should be given to the affidavit evidence.

152. The court finds that this being contentious probate proceedings in which the claimant is seeking to have a court pronounce in favour of the validity of the will, it was incumbent upon the claimant to call Ramnanan as a witness so that her evidence of witnessing the execution could be tested by way of cross-examination. That the production of Ramnanan’s affidavit of due execution was insufficient to discharge the burden which lay upon the claimant to prove that the purported will was executed as required by law especially in light of the fact that Ramnanan’s evidence in her affidavit was that the will was executed at El Guayanapo, Rio Claro whereas the claimant’s evidence during cross-examination was that the will was executed at the home office of Jagroop, while on the purported will, Jagroop stated her address to be 1317 Tabaquite Road, Rio Claro.

153. But the matter did not end there, the burden having shifted to the claimant, the claimant also led no evidence from Jagroop, the person would have allegedly taken instructions for the preparation and execution of the purported will as well as witnessed same. Jagroop having prepared the purported will and witnessed same, it is to be expected that he would possess firsthand knowledge of the execution. This in the court's view was a fundamental flaw in the claimant's evidence and the absence same adds to the suspicious circumstances and does nothing to assuage it.

154. Accordingly, the court was entitled to and did draw an adverse inference from the failure to call those persons as witnesses. Additionally, the court was entitled to consider that the evidence from those persons would not have supported the claimant's case.<sup>18</sup>

155. Further, a court has to approach the defendants' evidence that the deceased intended for everyone to inherit and benefit from the subject property with much scrutiny as by its very nature, such evidence admits easily of fabrication where the other party is deceased and is unavailable to answer the allegation. In this regard, what is said by the defendants must, in the court's view accord with common sense, what is plausible and reasonable in the circumstances.

156. The evidence before the court was that Jennifer, her daughter Melissa and her son Mark were living at the property. Although there was some contention as to what year she began living there, it was clear that she added a room to the existing house for her daughter and son to dwell. Further, it was clear on the evidence that Sylvester and his family are residing at the subject property although there was some dispute as to

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<sup>18</sup> : See *Wisniewski v. Central Manchester Health Authority* (1998) 7 PIQR 323 at 340 at 340.

who gave them authority to so do. It was also clear that Sylvester added a structure to the existing house for him and his family to dwell.

157. Upon an evaluation of the evidence, the court finds that it was more probable than not that Sylvester had asked the deceased for permission to return to the subject property to reside and that by allowing him to so do. It means that the deceased would have been fully aware of the fact that those persons were resident on the property. It was also therefore reasonable to infer that the deceased would not have had the intention to deprive all of her children of a share in the property. Of course, as human behaviour would have it, it is quite possible but in the absence of some indication of a reason for the sudden and change, the court is left with the view that such an occurrence was highly unlikely in the circumstances of this case. As such, the court finds that the claimant has not provided the court with any evidence to show why the deceased would have changed her mind.

158. As set out above, even if the party propounding the will leads evidence as to due execution, as the claimant attempted to do in this case, there is still the question of whether the suspicions of the court was aroused. The failure to lead material evidence from the abovementioned persons and the evidence of the defendants raised the suspicions of the court. A court ought not to pronounce in favour of validity of a will unless the suspicion is removed and it is judicially satisfied that the will propounded does express the true will and intention of the deceased.<sup>19</sup> In the circumstances, the court finds that the claimant did not discharge the burden to prove that the purported will of the deceased was duly executed.

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<sup>19</sup> Lalla v Lalla, Civ App No. 102 of 2003 paragraph 59 per Mendonca JA

159. Despite the finding above that the claimant has failed to establish a prima facie case by proving due execution, for completeness the court will consider the issues of testamentary capacity and want of knowledge and approval.

**ISSUES 2 & 3** - *whether the deceased knew and approved of the contents of the purported will and whether the deceased possessed the testamentary capacity to execute the purported will*

**Law**

160. **Williams on Wills**,<sup>20</sup> under the rubric “Knowledge and approval”, provides as follows;

*“Before a paper is entitled to probate, the court must be satisfied that the testator knew and approved of the contents at the time he signed it. It has been said that this rule is evidential rather than substantive and that in the ordinary case, proof of testamentary capacity and due execution suffices to establish knowledge and approval but in certain circumstances the court requires further affirmative evidence.”*

161. Further, **Halsbury’s Laws of England**<sup>21</sup> provides as follows;

*“Whenever the circumstances under which a will is prepared raise a well-grounded suspicion that it does not express the testator’s mind, the court ought not to pronounce in favour of it unless the suspicion is removed. Thus where a person propounds a will prepared by himself or on his instructions under which he benefits, the onus is on him to prove the righteousness of*

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<sup>20</sup> 8th Edition, Volume 1, paragraph 5.1 page 51

<sup>21</sup> 4th Edition (Volume 17), paragraph 907

*the transaction and that the testator knew and approved of it. A similar onus is raised where there is some weakness in the testator which, although it does not amount to incapacity, renders him liable to be made the instrument of those around him; or where the testator is of extreme age; or where knowledge of the contents of the will is not brought home to him; or where the will was prepared on verbal instructions only, or was made by interrogatories; or where there was any concealment or misrepresentation; or where the will is at variance with the testator's known affections, or previous declarations, or dispositions in former wills, or a general sense of propriety."*

162. In ***Banks v Goodfellow***,<sup>22</sup> Cockburn LJ stated the following in relation to testamentary capacity;

*"It is essential to the exercise of such power that a testator shall understand the nature of his act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right or prevent the natural exercise of his faculties that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it, which if his mind had been sound, would not have been made...As long as a testator knows that he wants to leave the assets in a specific proportion for reasons that are clear, rational and consistent then he might be considered capable."*

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<sup>22</sup> (1890) LR 5 QB 549 at 565



163. In **Doreen Fernandes v Monica Ramjohn Nadeau, Ian Ramjohn, Marilyn Ramjohn et al**,<sup>23</sup> Justice Stollmeyer, (as he then was), stated the following at page 15, 16 & 17;

*"The requirements for testamentary capacity and for knowledge and approval are separate...Testamentary capacity, which the Claimant must show in this case, requires the capacity to understand (in the sense of the ability to do so) certain important matters relating to a will namely: the nature of the act and its effects, and the extent of the property being disposed of. The testator must also be able to comprehend and appreciate the claims to which he might give effect...If there is evidence of actual understanding then that proves the requisite capacity...Knowledge and approval requires proof of actual knowledge and approval of the contents of the will... "Further, it may well be [per Chadwick JA at paragraph 64 of Hoff v. Atherton] that where there is evidence of a failing mind - - and, a fortiori where evidence of a failing mind is coupled with the facts that the beneficiary has been concerned in the instructions for the will - - the court will require more than proof that the testator knew the contents of the document which he signed. If the court is to be satisfied that a testator did know and approve the contents of his will - - that is to say, that he did understand what he was doing and its effect - - it may require evidence that the effect of the document was explained, that the testator did know the extent of his property and that he did comprehend and appreciate the claims on his bounty to which he ought to give effect. But that is not because the court has doubts as to the testator's capacity to make a will. It is because the court accepts that the testator was able to understand what he was doing and its effect at the time he signed the document, but needs*

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<sup>23</sup> CV2006-00305

*to be satisfied that he did, in fact, know and approve the contents - - in the wider sense to which I have referred.”*

164. Further, in **Moonan v. Moonan**<sup>24</sup> Wooding CJ stated as follows;

*“the onus of proving testamentary capacity was on the appellants who were propounding the will. If the matter is left in doubt, then they fail to prove that the testator was capable of making a will. The resolution of that issue may be in one of three ways: either that the court is affirmatively satisfied that Joseph Moonan was sound in mind, memory and understanding, or that the court is satisfied that he was not sound in any of these respects, or that the court is left in doubt, with the result that the issue has to be resolved against the appellants who, as I said, were propounding the will.”*

### **Analysis and Findings**

165. The defendants submitted that the claimant failed to prove that the deceased knew what she was doing, approved the contents of the purported will and that she possessed testamentary capacity to execute a will. The evidence of the defendants was that over the period of 2009 to 2011, the deceased deteriorated to the point that she was blind, deaf and bedridden (in that order). As such, the defendants alleged that it was impossible for the deceased to be taken anywhere to execute a will and/or to have a will read to her for her to understand and execute same.

166. Further, it was the evidence of the defendants that it was unlikely that deceased knew the nature of the document she was executing as during

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<sup>24</sup> (1963) 7 WIR 420 at 421 I

the period that she was under the care of the claimant, the claimant used an ink stamp pad to print her thumbprint on her pension cheques.

167. The court finds that the defendants' argument that the deceased was accustomed to having her thumb print placed on her pension cheque and therefore must have thought that she was placing her thumbprint on her pension cheque and not a will is speculative. Be that as it may, the fact that the claimant accepted during cross-examination that she did in fact have an ink stamp pad at the house which she used to print the deceased's thumbprint on her pension cheques did excite the court's suspicion.

168. The defendants have relied on their evidence of the deceased being blind, deaf and bedridden to show that the deceased could not have known and acknowledged the contents of the purported will and that she lacked testamentary capacity. The claimant submitted that the medical reports from both medical practitioners; Dr. Amin and Dr. Ferdinand does not support the case that the deceased was deaf, blind or bedridden. As such, the claimant submitted that there was no proof of any medical condition affecting the deceased eyesight, hearing or mental impairment.

169. A court is not duty bound to accept the evidence of an expert or more than one expert, particularly where the opinion proffered is coloured by other facts which are diametrically opposed to the opinion and a reasonable basis has been provided for the difference between what the expert says and what the evidence demonstrates. In this regard context of major assistance when deciding whether to accept the whole or part of what an expert says or whether to reject same. As such, it is necessary for

the court to consider the grounds on which that opinion is based as well as all the other evidence before the court in order to arrive at its finding.<sup>25</sup>

170. Dr. Amin's report stated that the deceased would have visited his office in 2001 and 2002. That at that time the deceased suffered from diabetes and hypertension. The evidence of the defendants was that over the period of 2009 to 2011, the deceased deteriorated to the point that she was blind, deaf and bedridden. It follows that Dr. Amin's medical evidence related to a period that is not under review by this court. The evidence was therefore largely irrelevant to the issues this court has to decide. What is telling though and if any value can be extracted therefrom is the fact that the diseases with which the deceased had been diagnosed and had been treated for as far back as 2001 were lifestyle diseases which as a matter of public knowledge may lead to ultimately to complications such as blindness and mobility issues if not managed effectively. This tends to support the evidence of the defendants.

171. Dr. Ferdinand supplied two medical reports. One to the claimant and one to the defendants. The one provided to the claimant is dated April 5, 2017 and the one provided to the defendants is dated April 26, 2018 however Sylvester testified that it was only received on April 26, 2018 since the Defence was due on April 27, 2018. A comparative analysis of Dr. Ferdinand's reports show the following discrepancies;

- i. In the report of the April 5, 2017 he set out that he was the doctor of the deceased from 2001 until the time of her death whereas in the report of April 26, 2018 he stated that he was her doctor from 2009 until the time of her death. That is a period of some eight

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<sup>25</sup> See *Woods v Woods & Anor.* paragraph 19 per Justice Des Vignes (as he then was)

years difference. It is such a wide discrepancy that the accuracy of both reports are immediately called into question.

- ii. In the report of April 5, 2017 report he gave the date of birth of the deceased as 1932 whereas in the 2018 report he gave it as 1933.
- iii. Finally, in the report of April 26, 2018 Dr. Ferdinand stated that he was writing same from memory as he kept no files on the deceased whereas on the April 5, 2017 no such statement was made. Quite an astounding admission. He does not say whether he ever kept records and if so what would have become of them.

172. The court therefore finds that in light of the aforementioned the medical report of Dr. Ferdinand dated April 5, 2017 is highly unreliable. In fact its unreliability shed a shadow of unreliability over the medical of the 26<sup>th</sup> April 2018 as a consequence. It is clear to the court that Dr. Ferdinand may either did not keep proper records and so did involve himself in an exercise of speculation or he was being untruthful in an attempt to evade the court process. The latter is of great concern to the court as it was the evidence of Sylvester that Dr. Ferdinand refused to attend court as he had been the recipient of rude treatment by attorneys while testifying in the past. Either way, the court makes no finding as to his motive. Suffice it to say that his report is completely unreliable in the court's view and no weight is given to it whatsoever.

173. As such, the court accepts the overwhelming direct testimony of the defendants that the deceased was in fact blind, deaf and bedridden at the time of the execution of the will. The evidence set out above which bears no repeating at this stage, is possessed of the ring of truth and is highly plausible. The defence evidence consists of all that they saw and knew in relation to the state of the deceased and it has left no room for doubt as

to her incapacity. The deceased could not therefore have had the capacity to understand that she had executed a will and intended so to do.

174. In **Butterworth's Wills Probate and Administration Service**, Division G, Contentious Matters: Narrative, Chapter 2, Disputes over the will under the rubric "When knowledge and approval must be proved", the following is provided at paragraph [2.28];

*"...it is possible to identify three main situations in which the court will require affirmative proof that the testator knew and approved the contents of the testamentary document: (1) where the document was executed in suspicious circumstances; (2) where the testator suffered from a physical disability that weakens the presumption that he read and understood the document (eg blindness); or (3) where the testator was of reduced mental capacity."*

175. The purported will did contain the following;

*"I having read over and explained the Contents of this Will to the within named Testatrix who understood same perfectly and made her mark in my presence"*

176. Further, in her affidavit of due execution, Ramnanan testified that prior to the execution of the purported will, same was in fact read over and explained to the deceased and that the deceased appeared to understand perfectly and have full knowledge of same before she executed it.

177. However, at the time of the execution of the purported will, the deceased was blind and deaf but neither the will nor the affidavit of Ramnanan made

mention of those facts and that those facts were taken into consideration when the purported will was allegedly explained to the deceased.

178. The court therefore finds that it has not been proven that the deceased possessed the requisite degree of understanding of the effects of the purported will, or knew and approved of the contents and effect of same.

### **DISPOSITION**

179. The court will therefore make the following order;

- i. The claim is dismissed.
- ii. It is declared that the purported last will and testament of Theresa Campbell deceased ("the deceased") dated June 2, 2012 is not a valid will and testament of the deceased.
- iii. Probate application L2728/15 filed on September 14, 2015 by the claimant is dismissed.
- iv. A copy of this order shall be transmitted to the Assistant Registrar of the Supreme Court (Probate Section).
- v. There shall be no order as to costs.

Ricky Rahim

Judge