

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No. 3183 of 2004**

**BETWEEN**

**CHERYL ANN LATCHU RAMDEO**

**Plaintiff**

**AND**

**ROUTIE LATCHU**

**First Defendant**

**AND**

**FRANCIS ANTOINE**

**Second Defendant**

**AND**

**ROMA SAGAN MARAJ**

**First Third Party**

**AND**

**HERMANT RAMKISSOON**

**Second Third Party**

**AND**

**HARDEO RAMHIT**

**Third Third Party**

**BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR**

**APPEARANCES:**

**Ms. Theresa Hadad- Maharaj for the Plaintiff.**

**Mr. Abdel Ashraph instructed by Mr. R. Gosine for the First Defendant.**

**Mr. Westmin James for the Second Defendant.**

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## **Judgment**

### **Background**

1. This matter involved a determination of the validity of various purported last wills and testaments of Abel Latchu (the deceased). That issue is between the claimant and the first named defendant. Further consequential issues arise with respect to the second named defendant in relation to the sale of land from the estate of the deceased to be determined at a subsequent phase of trial.

2. The claimant is the daughter of Abel Latchu, the deceased. The first named defendant is the wife of the deceased.

### **Chronology**

3.

On November 28 2001 the deceased allegedly executed a will. (The first will).

On December 10 2002 the deceased allegedly executed a second will. (The second will).

On September 23 2003 the deceased allegedly executed a third will. (The third will).

On August 11, 2004 the deceased died.

On September 28, 2004 the defendant applied for probate of the first will.

On November 14, 2004 the claimant instituted these proceedings seeking to propound the second will.

On March 21, 2006 in the defence and counterclaim filed by the defendant in the instant action the defendant referred for the first time to the third will and sought to propound this will instead.

### **The Claim**

4. The claimant alleges that:

- a. The third will did not comply with statutory formalities.
- b. It was not read over to the deceased.
- c. That he did not understand its effect and did not know and approve its contents.
- d. It was a forgery.

5. The defendant does not dispute the validity of the second will but relies upon the fact that the third will, if valid, revokes all prior wills.

### **Issues**

6.
  - a. Whether the Second Will is the last Will and Testament of the deceased Abel Latchu;
  - b. Further thereto, whether the Plaintiff has adduced sufficient evidence to satisfy the Court that the Second Will may be proved in solemn form;
  - c. Whether the Third Will is the last Will and Testament of the deceased Abel Latchu;

- d. Further thereto, whether the Third Will is a forgery;
- e. Further thereto, whether the deceased knew and approved the contents and effect of the Third Will;
- f. Further thereto, whether the Plaintiff has adduced sufficient evidence to satisfy the Court that the Third Will was executed in accordance with the Wills and Probate Act Ch. 9:03 to permit it to be proved in solemn form;

## **Conclusion**

7.

- a) The Second Will is the last Will and Testament of the deceased Abel Latchu;
- b) The Plaintiff has adduced sufficient evidence to satisfy the Court that the Second Will may be proved in solemn form;
- c) I decline to admit the Third Will dated the 23<sup>rd</sup> September 2003 to probate as the last Will and Testament of the deceased Abel Latchu;
- d) I conclude on a balance of probabilities that the Third Will is a forgery and/or the First Defendant has failed to discharge her burden of proving the validity of the Third Will. I reach that conclusion reluctantly as I have no reason to believe that the attorneys who

took execution of that Will would be privy to a forgery, and I expressly make no finding that they were.

- e) What cannot be disregarded is the evidence from the grave of the deceased himself. He claimed the first will was instigated by the first defendant and disavowed it in his lifetime. In view of the serious nature of that allegation by the deceased himself, the first defendant must satisfy a court that any subsequent wills she produced, purporting to be by the deceased in her favour, were authentic and properly executed.
  
- f) Further I am quite convinced that there are sufficient discrepancies and suspicious circumstances attendant upon the third will that it would be unsafe and unjust to allow it to be admitted to probate.
  
- g) I am not satisfied on a balance of probabilities that the deceased had the requisite testamentary capacity at the time he executed the third will, or knew and approved the contents and effect of the third Will.

I am not satisfied on a balance of probabilities that the first defendant has adduced sufficient evidence to satisfy the Court that the said third Will was executed in accordance with the Wills and Probate Act Ch. 9:03 so as to permit it to be proved in solemn form.

## Disposition and Orders

8.

- a. The Court pronounces for the force & validity of the last Will and Testament dated December 10 2002 of Abel Latchu, the deceased;
- b. The Court further pronounces against the force and validity of the alleged last Wills and Testaments of the deceased dated November 28 2001 and September 23 2003;
- c. It is ordered that Probate of the Will of the deceased dated December 10 2002 be granted to the Plaintiff Cheryl Ann Latchu Ramdeo the executor named therein and that there be orders for the Plaintiff on her claims as set out in paragraphs 1,2,3 and 4 of the Statement of Case filed 24/06/05 as follows ;
  - a. A grant to Cheryl Ann Latchu Ramdeo of Probate of the Will dated December 10<sup>th</sup> 2002 in the Estate of the Deceased;
  - b. An injunction restraining the First named Defendant whether by herself, her servants, agents or otherwise howsoever from selling, pledging, realizing, entering into agreements or otherwise in any manner whatsoever dealing with the real and personal property of the deceased;
  - c. An injunction restraining the First named Defendant whether by herself her servants agents or otherwise however from receiving or making demand for any rent, profits, dividends, interest or other sums accruing to or becoming due to the Estate of the Deceased;
  - d. An account of all sums received by the First named Defendant on account of the Estate of the deceased from August 11<sup>th</sup> 2004.

- e. The First named Defendant to pay Plaintiff's costs to be taxed in default of agreement.
- f. Liberty to apply.

## **Analysis and reasoning**

### **The validity of the third will**

9. The issues revolve primarily around the validity of the third will. However in this regard the following matters established on the evidence, in relation to the first will, are relevant.

### **The First Will**

10.

- a. The first will was purportedly executed in the presence of an Attorney at Law Mr. Gosine.
- b. The first named defendant initially sought probate of the first will by Probate Application No. L-2594 on the 28<sup>th</sup> September 2004.
- c. In her application for probate of that first will the first named defendant swore that it was the last will and testament of the deceased.
- d. In letter dated October 27 2004 from attorney at law Mr. Gosine to attorney at law Ms Boynes he indicated that his firm instructions from the deceased in June 2004 were that there was no other will.



- e. That the deceased visited attorney at law Mr. Sankersingh on December 9 2002, prepared the second will, and denounced the first will as a forgery.
- f. The deceased gave instructions for the issue of a letter dated December 10 2002 denouncing the first Will.
- g. A handwriting expert Mr. Parmessar prepared a report concluding that it was highly probable that the first will was not signed by the deceased.
- h. The third will was not mentioned, or produced, or revealed, until the instant claim was filed seeking probate of the second will.

### **The Contents of the First Will**

- 11. As to the contents of the First Will
  - a. The First Defendant is the Executor and Primary Beneficiary in respect of same;
  - b. The First Will purports to dispose of the majority of the deceased's property, Lot 77, and a further six (6) Lots of land at Cunupia to the First named Defendant, with his dwelling house bequeathed to four of his children in equal shares, and
  - c. The Plaintiff is referred to as "Pamela" therein though claims she has never borne that name (though she was called by the nickname "Pam").

## **The Second Will**

12. The validity of the second will is not disputed by the first named defendant. This implies that the defendant does not take issue with:

- (a) The testamentary capacity of the deceased at the time of the second Will, and
- (b) The instructions given by the deceased **in relation to the letter** denouncing the first will, which instructions were issued at the same time that instructions were given for the second will, in the same circumstances, and to the same attorney at law.

## **Circumstances Surrounding the Alleged Execution of the Third Will**

13. It is necessary therefore, to consider the entirety of the evidence in relation to the third will and in particular the circumstances surrounding its execution. In this regard the evidence of Mr. Shastri Ramtahal Attorney at Law was crucial, (as attested to via his witness statement).

*Sometime in the year 2003 one Abel Latchu and his wife Routie Latchu attended my office.*

*1. They both **on more than one occasion came to me** for advice on certain properties which were in either in Mr. Abel Latchu's name or properties that were mortgaged by Mr. Abel Latchu. These properties I recall were situated at Southern Main Road, Cunupia and Carlsen Field Chaguanas. I had taken statement from him with respect to these matters. He always appeared to be in a sound state of mind and his instructions were firm.*

*2. There were two matters in which I was retained to look after. ....*

3. *The second matter which Mr. Latchu instructed me on was with respect to making a new Will which was intended to revoke all other wills. This was done on the 23<sup>rd</sup> of September, 2003. He showed me a photocopy of a Will dated the 28<sup>th</sup> of November, 2001 and he insisted that he wished to make a new Will which I did.*

4. *Mr. Latchu informed that that he wanted to ensure that the property situated at Corner of Chin Chin Junction, Cunupia be devised to his wife Routie Latchu. After taking instructions on the Will I personally typed up the Will as I often times do as my Secretary at the time Ms. Camille Ravello was not in office on that date. I asked Mr. Latchu to sit in the waiting room of my office as I typed up the documents.*

5. *After I typed the Will I presented same to Mr. Latchu **to read same** and he approved of same. **I also explained the contents** of same and he was satisfied that the Will was properly drawn up. I asked one Natasha Hosein, another Attorney at Law in an adjoining office to witness the execution of this Will which she did. **Mr. Latchu then signed the Will in my presence and in the presence of Ms. Natasha Hosein and Mrs. Latchu and in Mr. Latchu's presence we both executed the Will.** Mr. Abel Latchu, Ms. Natasha Hosein and I were therefore present at the same time at the time of signing. I thereafter gave to Mr. Latchu the original Will for safe keeping.*

14. Under cross examination the following became clear:

- a. Mr. Ramtahal did not request identification from the deceased although he indicated that he knew him from having done other work for him. In those circumstances he thought proof of identification was unnecessary. In fact however because of the very common occurrence of discrepancies in this jurisdiction between a person's actual name and the name they are commonly known as, this should be standard practice in any event.
- b. Mr. Ramtahal was aware that the deceased had a speech impediment, having suffered a stroke, but did not require the deceased to obtain a medical report attesting to his mental competence.
- c. Mr. Ramtahal did not keep a copy of any written instructions given by the deceased.
- d. Mr. Ramtahal's files did not contain a copy of the third will.
- e. Mr. Ramtahal's only copy of the third will was a fax received by him from Mr. Gosine's office.
- f. Mr. Ramtahal claimed that he typed up the third will himself at the computer at his office and that he prepared only one copy as his photocopier wasn't working.

15. However

- a) His printer was working and there was no reason why he could not have printed two copies.
- b) Although he knew that the purpose of his evidence in court was to address issues concerning the third will he did not **check** his computer,
  - i) To see whether he could locate a copy of that will on its hard drive, and if so,

- ii) To check whether the copy of the will that he had prepared was the same as the alleged copy of the third will he had received by fax from Mr. Gosine's office.

16. These circumstances are highly unsatisfactory in the context of a purported disposition of significant assets, especially when one handwriting expert has concluded that that will is a forgery. It leaves the following issues unsatisfied:

a) Whether the deceased knew and approved or was capable of approving the contents of a third will.

b) Whether the third will reflected the instructions of the deceased.

c) Whether the will prepared by Mr. Ramtahal was the same as the third will now sought to be admitted to probate.

### **The Contents of the Third Will**

17. (1) The First Defendant is the executrix and **only** Beneficiary and no provision is made for the deceased's children, and

(2) The Third will purports to dispose of only one of the deceased's properties (Lot 77).

18. The contents of the third will are themselves curious, as there is no reason why the deceased, if he knew and approved of the contents of this will, should not make reference to, and dispose of, his other properties, as he had done in his previous wills.

### **The evidence of the handwriting experts**

#### **Glenn Parmassar – Handwriting Expert**

19. Glenn Parmassar's evidence in chief consisted of tendering into evidence his Witness Summary filed on the 9<sup>th</sup> December 2009 and his expert opinion on the validity of the First and Third Wills, as set out in his two Reports dated the 2<sup>nd</sup> June 2006 (the "First Report") and 4<sup>th</sup> February, 2009 (the "Second Report") respectively.

#### **The First Report**

20. In his First Report Glenn Parmassar concludes that it is highly probable that the deceased Abel Latchu did **not** sign the First Will. This is the Will which the deceased denounced during his lifetime as a forgery.

21. There was no challenge to this report.

#### **The Second Report**

22. In his Second Report dated the 4<sup>th</sup> February, 2009 Glenn Parmassar sets out his instructions, the questioned documents, the specimen documents, his method and his findings in

respect of the Third Will and ultimately concluded that it was **highly probable that the questioned signature of the deceased on the third will was not executed by the specimen writer, the deceased.**

23. In three appendices to his Report Glenn Parmassar also sets out the Range of Opinion Terminology used in Forensic Document Examination, the term “*highly probable not*” is explained as follows:

***Highly probable/Highly probable Not***

*It is highly probable the questioned material was written/was not written by the specimen writer.*

*This evidence falls just short of the conclusive level. However, it is still very strong and persuasive and remains within the virtually certain category. Sometimes the term very strong may be used. It can mean virtually certain.*

24. The Technical Issues-Methodology and Principles Used, and his Qualifications are also set out.

25. Cross examination of Glenn Parmassar did not diminish his evidence, and in particular his opinion that on the Third Will there were features “indicative of a simulated drawing process” rather than “the normal execution of a naturally executed signature.” He also notes in

his Second Report that the “skill level of the questioned signature also displayed a slightly better quality than those of the specimen signatures.” His findings are therefore supportive and corroborative of the Plaintiff’s assertion that the Third Will is a forgery.

### **Mr. Patrick Sealy -Handwriting Expert**

26. A Witness Summary of Patrick Sealy was filed on the 11<sup>th</sup> November 2010 and attached thereto was a Report dated the 3<sup>rd</sup> October 2010.

27. Mr. Patrick Sealy is a Document Examiner, BA (Hon), MA. He specializes in handwriting analysis.

28. On the 26<sup>th</sup> of July, 2010 Mr. Sealy received **photocopies** of a Will dated the 10<sup>th</sup> of December, 2002 (the second will) signed by A. Latchu and a Will dated the 23<sup>rd</sup> of September, 2003 (the third will) signed by A. Latchu for the purpose of comparing the specimen signatures of Abel Latchu with specimen signatures on photocopies of 15 Scotiabank withdrawal slips to determine the authorship of the photocopied Wills.

29. Mr. Sealy’s findings were that **it is probable that Abel Latchu wrote the signatures on both the Will dated the 10<sup>th</sup> of December, 2002 and the Will dated the 23<sup>rd</sup> of September, 2003.**



30. Mr. Sealy also noted that both signatures of Abel Latchu on the Wills displayed similar characteristics and **there is the probability that they were written by the same person**. He also stated in his findings that there are identifying features in the signatures of Abel Latchu on the photocopied withdrawal slips that indicate that both signatures of Abel Latchu on the Wills were written by the same person.

31. Mr. Sealy prepared a report reflecting his conclusion and findings.

### **The Report**

32. According to the said Report dated 3<sup>rd</sup> October 2010 the questioned documents and specimen signatures were provided to him on the 26<sup>th</sup> July, 2010.

33. His findings were that it is “probable” that the signatures were written by the deceased on the Second and Third Wills.

34. The reasons for the conclusion of *probable* are “similar characteristics” and “identifying features”.

35. Mr. Sealy’s findings are more equivocal than those of Mr. Parmassar.

36. Further, Mr. Sealy prepared his report using photocopies of the Questioned Documents and the Specimen signatures, although he viewed the original of the specimen signatures the day before the trial.

### **Viva Voce Evidence**

37. In his examination in chief Mr. Sealy goes through a detailed explanation of **similarities** and **variations**, which appear in the questioned documents and the specimen signatures.

38. He ascribes significance to the writing quality and form. He notes that an upward slant to the signature is probably subconscious, and consistent. He also considers that the spacing, which is done automatically, is again consistent. He explains the difference between himself and Mr. Parmassar as possibly being the result of differing methodologies. His methodology, unlike Mr. Parmassar, involved looking for similarities between two signatures, then going on to examine others.

39. There is no need to microanalyse the reasons for the differences between the two experts as I find from the evidence otherwise that the first will is a forgery, that it is more probable than not, based on the attendant circumstances of suspicion, that the third will is also a forgery, and that Mr. Parmassar's evidence corroborates this.

40. I note however, his failure to give reasons contemporaneous with his report, his late inspection of original documentation and his failure to inspect the original Third Will at all, together with the lower degree of conclusiveness of his conclusion.

41. He confirmed under cross-examination that a good forgery can rate a **probable** on the scale, and that there is an element of subjectivity in coming to a conclusion on the basis of handwriting analysis.

42. I therefore find that his report is not sufficient proof of the validity of the third will. I am constrained to conclude, because they both cannot be correct, that Mr. Parmassar's report is to be preferred. I have also paid regard to the approach of the Honourable Justice Stollmeyer , as he then was , to conflicting evidence of handwriting experts in the case of **Marilyn Lucky v. Maureen Elizabeth Thomas -Vaillo H.C.A. No. CV 1396 of 1996.**

### **Routie Latchu – The First Defendant**

43. The First Defendant denied knowledge that the deceased denounced the First Will during his lifetime. Counsel for the Plaintiff cross-examined her on the letter prepared by Mr. Sankersingh on the instructions of the deceased. The Defendant admitted to having had sight of the letter, reading the contents of same and admitted that her attorney never suggested to Mr. Sankersingh that the letter denouncing the will of 2001 is in any way invalid.

## **Evidence of execution of the second will dated the 10<sup>th</sup> December, 2002**

### **Lennox Sankersingh – Attorney at Law**

44. The witness statement of Lennox Sankersingh filed on the 20<sup>th</sup> October 2008 exhibited:

- The First Will marked “A” which the deceased Abel Latchu denounced in the presence of Mr. Sankersingh, and further instructed him to prepare a letter to Routie Latchu to this effect;
- Written Instructions for the preparation of the Second Will marked “B” which Mr. Sankersingh retained and was able to produce, (in marked contrast to the circumstances surrounding the third will) ;
- The Second Will marked “D” which he prepared in accordance with the deceased’s instructions ,and had witnessed by Dr. George Dixon, a qualified medical practitioner;
- The note prepared by Dr. George Dixon dated the 10<sup>th</sup> December, 2002 and marked “E”, wherein he confirmed that the deceased was of sound mind;

45. Mr. Sankersingh’s evidence reveals that he treated the process of preparation and of execution of the second will with the appropriate degree of meticulousness and prudence, (which was not similarly shown by others in relation to the Third Will).

46. Mr. Sankersingh's evidence is accepted in support of the assertions made by the Plaintiff that:

- a. The deceased denounced the First Will as a forgery;
- b. The deceased had the requisite capacity to make the Second Will;
- c. The Second Will was consistent with his intentions; and
- d. The deceased knew and approved the contents and effect of the Second Will.

47. The circumstances surrounding the preparation of the Second Will and his record keeping reflect best practice by Attorneys at Law in the preparation of Wills for elderly persons who present with a blatant physical impairment, and leave no doubt that the deceased knew and approved the contents of the second will and that he had the requisite mental capacity.

**Dr. George Dixon – Witness of Due Execution**

48. Dr. George Dixon's Witness Summary filed on the 9<sup>th</sup> December 2009 and his Witness Statement filed on the 21<sup>st</sup> January 2011 were tendered into evidence by consent.

49. Dr. Dixon's evidence relates mainly to the mental condition of the deceased when the Second Will was made, the fact that the deceased duly executed the Second Will, which was

witnessed by Dr. Dixon and Ms. Garraway in the presence of the deceased and of each other, and that the deceased knew and approved the contents of the Second Will.

50. His evidence is clear and uncontradicted and is accepted.

### **Contents of the second will**

51. (1) The Plaintiff is the main Beneficiary receiving property at Chin Chin Road and Jerningham Junction and a share in the property at Southern Main Road, together with monies in bank accounts;

(2) Provision is made for the deceased's other children;

(3) The Second Will purports to dispose of the majority of the deceased's property;

(4) No provision is made therein for the First Defendant.

52. This will is alleged by the Plaintiff to have been signed by the deceased Abel Latchu in accordance with the formalities required by the provisions of the Wills and Probate Act Ch. 9:03.

53. **The First Defendant did not dispute the validity of the Second Will at the trial of this matter.** Further the evidence of Lennox Sankersingh and Dr. George Dixon prove that

- a. the deceased had the requisite mental capacity,
- b. knew and approved the contents of the second will, and

c. executed the second will in accordance with the formalities required by the Wills and Probate Act Ch. 9:03.

The second will can therefore be admitted to probate if it is determined that the third will cannot be.

## **The Third Will**

### **Allegations of Fraud**

54. The Plaintiff has raised allegations of fraud against the First Defendant and has the burden of proving that the Third Will is a forgery.

55. In **Marilyn Lucky v. Maureen Elizabeth Thomas -Vaillo H.C.A. No. CV 1396 of 1996** per the Honourable Justice Stollmeyer at page 12 it was held that:

*“The burden of proving the affirmative allegations impeaching the will where fault does not lie with the testator e.g. undue influence or **fraud** is upon the party making them. This applies notwithstanding that the party propounding the will still has the burden of satisfying the Court as to due execution, for this remains an essential matter whatever the other issues may be raised in the suit.”*

56. I find that the Plaintiff has discharged this burden and has proved the Third Will to be a forgery by virtue of:

a. The Expert evidence of Glenn Parmassar;

- b. The First Defendant's Affidavit sworn in the Non-Contentious Probate Proceedings No. L 2594 of 2004 wherein she identified the First Will of the deceased as his last Will and Testament and **omits to mention** the alleged Third Will.
- c. The inexplicably late discovery of the Third Will which is not mentioned by the First Defendant by way of pleading, correspondence, or otherwise until 2006.
- d. The absence of any documentary evidence contemporaneous with the making of the Third Will.
- e. The First Defendant's Attorney's letter to Messrs. Boynes & Co. dated the 27<sup>th</sup> October 2004 wherein he asserted that the deceased had made no other will other than the First Will, at a time when the First Defendant claimed under cross examination both she and her Attorney were aware of the alleged Third Will.
- f. The fact that the deceased claimed the First Defendant forged and or caused to be forged the First Will casts suspicion on any further will she produces.

57. Taken together I find they provide evidence of fraud.

### **Suspicious Circumstances**

58. Further, the above matters, coupled with Mr. Ramtahal's failure to provide any contemporaneous documentation, a file, an electronic record of the Third Will or instructions relative thereto, or to even look for same, do nothing to dispel the suspicions raised.



59. It is settled that the Court ought not to pronounce in favour of a Will in respect of which there are circumstances surrounding the preparation and production of same which arouse the suspicion of the Court.

60. In **Lalla v. Lalla Civ App No. 102 of 2003** the Honourable Mendonca JA held (at paragraph 59) that:

*“Where there are circumstances which excite the suspicion of the Court, the Court ought not to pronounce in favour of the Will unless the suspicion is removed so that the Court is satisfied that the Will propounded does express the true Will of the deceased.”*

61. In **Lalla v. Lalla** it was further explained that the circumstances, which have been held to excite suspicion, include the **intrinsic terms** and the **circumstances of the preparation and execution of the Will** and regard must be had to the **circumstances primarily existing at the time** when the Will was executed as well as **subsequent events**. (At paragraph 60)

### **Proof of the third will in solemn form**

62. Even putting aside the allegations of fraud the onus would lie on the first named defendant to prove due execution of the third will.

### **Testamentary Capacity, Want of Due Execution, Want of Knowledge and Approval**

63. In the case of **Fernandes v. Ramjohn et al CV. 2006-00305** the Honourable Stollmeyer J., as he then was, set out the law as it relates to testamentary capacity. The learned judge noted that the requirements for **testamentary capacity** and for **knowledge and approval** are separate.

*Testamentary capacity requires the capacity to understand 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. (At page 15) (Emphasis added)*

"If there is evidence of actual understanding then that proves the requisite capacity". (*Hoff v. Atherton* [2004] EWCA Civ 1554 paragraph 33, referring to *Banks v. Goodfellow* (1870) LR 5QB 549 at 565.)

64. Knowledge and approval requires **proof of actual knowledge and approval of the contents of the will**. According to the Honourable Justice Stollmeyer (citing *Hoff v. Atherton*), this is a further and a separate test. (Page 16 *ibid*)

65. The Plaintiff submitted that the First Defendant, at Trial was unable to establish both testamentary capacity and knowledge and approval.

66. The testator, at the time he allegedly made the Third Will, was the owner of several properties, yet the majority of these properties are mentioned nowhere in the Third Will. In fact the testator only devises one of his properties in the Third Will.

67. The First Will, which the First Defendant claims was also made by the testator, devises many of the testator's properties, as does the Second Will, which is acknowledged by both the Plaintiff and the First Defendant to have been made by the deceased.

68. The Plaintiff submits that the testator's failure to treat with the majority of his estate in the alleged Third Will suggests that he not only did not understand the nature and effect of making a new will but that he did not know or approve of its contents.

69. The Plaintiff further submits that the testator's medical condition further evidences a lack of testamentary capacity.

70. In **Marilyn Lucky v. Maureen Elizabeth Thomas -Vaillo H.C.A. No. CV 1396 of 1996** the Honourable Justice Stollmeyer, as he then was, at page 15 stressed the need for the presence of a medical practitioner when an elderly or infirm testator makes a will.

*“Where a testator is elderly and infirm his will should be witnessed and approved by a medical practitioner who satisfies himself as to the capacity and understanding of the testator and who records his examination and findings – **Re Simpson, Schaniel v Simpson 1977 121 Sol Jo 224**”* relied on in ***Lookhoor v. Lookrwah*** at p. 19.

71. Mr. Ramtahal admitted that he, as an attorney at law was unqualified to certify the testator as being ‘of sound mind’. Mr. Ramtahal also admitted that he had been told that the testator had suffered a stroke the year before and stated that the testator appeared to be in an advanced stage of age. Mr Ramtahal stated that the testator spoke with a slight stutter, but that he was able to understand him, though not 100%.

72. I find that, coupled with all the suspicious circumstances surrounding the execution of the third will, these matters weigh against the probability that the testator had testamentary capacity or knew and approved the contents thereof.

### **Conclusion**

73.

- a. The Second Will is the last Will and Testament of the deceased Abel Latchu;
  
- b. The Plaintiff has adduced sufficient evidence to satisfy the Court that the Second Will may be proved in solemn form;
  
- c. I decline to admit the Third Will dated the 23<sup>rd</sup> September 2003 to probate as the last Will and Testament of the deceased Abel Latchu;
  
- d. I conclude on a balance of probabilities that (1) the Third Will is a forgery and/or (2) the First Defendant has failed to discharge her burden of proving the validity of the Third Will. I reach that conclusion reluctantly as I have no reason to believe that the attorneys who took execution of that Will would be privy to a forgery, and I expressly make no finding that they were.

- e. What cannot be disregarded is the evidence from the grave of the deceased himself. He claimed the first will was instigated by the first defendant and disavowed it in his lifetime. In view of the serious nature of that allegation by the deceased himself, the first defendant must satisfy a court that any subsequent wills she produced, purporting to be by the deceased in her favour, were authentic and properly executed.
  
- f. Further I am quite convinced that there are sufficient discrepancies and suspicious circumstances attendant upon the third will that it would be unsafe and unjust to allow it to be admitted to probate.
  
- g. I am not satisfied on a balance of probabilities that the deceased had the requisite testamentary capacity at the time he executed the third will, or knew and approved the contents and effect of the third Will.
  
- h. I am not satisfied on a balance of probabilities that the first defendant has adduced sufficient evidence to satisfy the Court that the said third Will was executed in accordance with the Wills Act 1837 and may be proved in solemn form;

## Disposition and Orders

74.

- a. The Court pronounces for the force & validity of the last Will & Testament dated December 10 2002 of Abel Latchu, the deceased;
- b. The Court further pronounces against the force & validity of the alleged last Wills & Testaments of the deceased dated November 28 2001 and September 23 2003;
- c. It is ordered that Probate of the Will of the deceased dated December 10 2002 be granted to the Plaintiff Cheryl Ann Latchu Ramdeo the executor named therein and that there be orders for the Plaintiff on her claims as set out in paragraphs 1,2,3 & 4 of the Statement of Case filed 24/06/05 as follows ;
  - a. A grant to Cheryl Ann Latchu Ramdeo of Probate of the Will dated December 10<sup>th</sup> 2002 in the Estate of the Deceased;
  - b. An injunction restraining the First named Defendant whether by herself, her servants, agents or otherwise howsoever from selling, pledging, realizing, entering into agreements or otherwise in any manner whatsoever dealing with the real and personal property of the deceased;
  - c. An injunction restraining the First named Defendant whether by herself her servants agents or otherwise however from receiving or making demand for any rent, profits, dividends, interest or other sums accruing to or becoming due to the Estate of the Deceased;
  - d. An account of all sums received by the First named Defendant on account of the Estate of the deceased from August 11<sup>th</sup> 2004.

- e. The First named Defendant to pay Plaintiff's costs to be taxed in default of agreement.
- f. Liberty to apply.

Dated this 18<sup>th</sup> day of July 2011.

Peter A. Rajkumar  
Judge.