THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2011-00455

BETWEEN

EULINE HACKETT

Claimant

AND

ROGER RANSOME

Defendant

Before The Honourable Mr. Justice Devindra Rampersad

APPEARANCES:

Claimant Mr. Fulton Wilson

Defendant Mr. Dale Scobie

DATE OF DELIVERY: 27th June 2013

JUDGMENT

CONTENTS

THE CLAIM

1. This action was filed by the sister of Erma Roach-Ransome who died on the 11th February 2006 (referred to in this judgment as "the deceased"). The claimant says that on 17th September 2008, she applied for a grant of Letters of Administration of the estate of the deceased as the only person entitled to benefit from the estate of the deceased. Caveats were subsequently filed on 25th May 2009, 21st January 2012 and 28th July 2010 in the Probate Registry by the defendant who was the deceased's step-son . On 28th August 2009, a warning to the first caveat was filed but no appearance was ever entered.

2. The claimant says that the defendant is relying on an alleged will of the deceased dated 15th February 2005 (referred to in this judgment as "the Will") and the claimant is challenging the Will on the grounds that:

    2.1. The Will was not duly executed by the deceased nor was it duly executed according to law;

    2.2. At the time of the alleged execution of the Will, the deceased was not of sound mind and understanding. She was 75 years of age, blind and physically ill and was not in such a condition of mind and memory as to be able to understand the nature of her act and the extent of the property she was disposing;

    2.3. The execution of the Will was obtained by undue influence or fraud;

    2.4. The deceased did not know and approve of the contents of the Will;

    2.5. The defendant does not have an interest in the estate of the deceased and the claimant denies the interest of the defendant in the estate.

3. To that end the claimant has asked this court to pronounce against the force and validity of the Will and to have a grant of Letters of Administration issued to her.

DEFENCE AND COUNTERCLAIM

4. The defendant, the deceased's step-son , denied that the claimant was entitled to benefit from the estate of the deceased in light of the Will.

5. He said that the Will was duly executed by the deceased in the presence of two competent witnesses, namely Roslyn Martin and Celia Williams Simpson and that the signature purported to be that of the deceased is in fact the true signature of the deceased.

6. The defendant counterclaimed for the court to pronounce for the force and validity of the Will in solemn form of law.

REPLY AND DEFENCE TO COUNTERCLAIM

7. The claimant in reply repeated that she was the only person entitled to benefit from the estate of the deceased.

THE CLAIMANT'S EVIDENCE

EULINE HACKETT

8. The claimant, Euline Hackett, in her witness statement, said that her sister, the deceased, married one Nathaniel Ransome (deceased) on 3rd September 2006. She said that prior to her sister's death she and her sister were very close and lived together in the United States and they both travelled between Trinidad and the United States on several occasions. The claimant claims that the deceased's eyesight began to deteriorate in 1994 and she lost her eyesight in 1995 and was therefore unable to work. It was at that time, according to the claimant, that they agreed that it was best for the deceased to return to Trinidad, which she did in 1996. The claimant said that she arranged for one Agnes Charles to care for her sister while in Trinidad as the deceased's husband as unable to care for her.

9. In her witness statement, the claimant further stated that on several occasions the deceased indicated that she had no intention of giving her property to the defendant, who had lived with her until the age of 18 and then left. She said that the deceased told her that if she gave the house to the defendant he would sell it and she did not want her property sold. The claimant further said that the defendant never showed any interest in the welfare of the deceased who suffered not only from her blindness but from other health issues associated with the HIV virus which she was diagnosed with in 2003. The claimant also stated in her witness statement that when she saw her sister about two month before her death she was unable to see and to write and used a thumb print for her transactions. The deceased, according to the claimant, also never mentioned having an attorney on the several occasions that they spoke and in fact she said that the deceased asked her to arrange a meeting with an attorney to execute a will. The claimant reiterated that she was the only family of the deceased, that the defendant was not part of the deceased's life after he left the home, and that the deceased did not make or execute the Will.

10. Certain statements, revelations and inconsistencies were made and observed during cross examination that the court took note of:

    10.1. The claimant before swearing to the truth of her witness statement corrected paragraph 4 of her witness statement and stated that her niece came to take care of the deceased not when she returned to Trinidad but after her husband had died.

    10.2. This witness, who had stated in her witness statement that she was close to her sister and visited her often, then stated under oath that whenever she

visited Trinidad she would only see her sister at her mother's house and speak to her on the phone.

10.3. The claimant stated under cross examination that she did not know who stood expenses for her sister's funeral, nor did she attend the funeral as she was not informed of her sister's death. It was not suggested to her that she was in fact informed about her sister's demise by the defendant so that her allegation of being unaware of it remains unchallenged.

10.4. The claimant, who said that her sister was completely blind upon her return to Trinidad in 1996, was shown the deceased's Trinidad and Tobago identification card which was issued in the year 1997 and which bore her sisters signature.

10.5. On the issue of the rape it was put to her that the defendant called her and told her that the deceased was raped. The claimant however denied this and stated that it was her niece who called to inform her of this.

10.6. It was also put to the witness that the defendant was personally responsible for taking the deceased to the hospital and that the defendant was listed as her next of kin in the hospital's records. The claimant said that as far as she knew it was her nephew who took the deceased to the hospital

10.6.1. Interestingly, the claimant never mentioned in her witness statement or statement of case before that her nephew took the claimant to the hospital. Nevertheless the hospital records are not before the court so the court cannot verify the defendant's allegation that the defendant was listed as next of kin at the hospital.

AGNES CHARLES-CUFFIE

11. Agnes Charles-Cuffie also filed a witness statement in this action. In it she stated that she knew the deceased for her whole life as the deceased and the claimant were her paternal aunts. She stated in her witness statement that, around 1996, the deceased returned to Trinidad to live with her husband at her home in Carapichaima and that when the deceased returned to Trinidad she was blind. At the request of the claimant, after the deceased was raped at home, she decided to live with the deceased and care for her.

12. She said that she began to live with the deceased in 2004 and that she would reside there most of the time, although on some occasions she would go back to her home in Maraval for the day. She said that she cleaned, washed and cooked for the deceased and took her to church, to the doctor and to the bank. It was her evidence that while at the bank, she never saw the deceased sign for anything but instead she would use her right thumb print to mark documents. She said that the defendant rarely visited the deceased although he would sometimes ask her for money. This witness, like the claimant, said that the deceased told her on more than one occasion that she would not give her house

to the defendant because she feared that the defendant would sell it. She was close to the deceased and that she never heard the deceased speak to an attorney and never saw her sign any Will.

13. Certain statements, revelations and inconsistencies were made during cross examination that the court took note of:

    13.1. The witness could not recall the year she began to assist the deceased but she did corroborate the claimant's correction of paragraph 4 of the claimant's witness statement when she stated that it was after the deceased's husband had died.

    13.2. This witness, who purported to be the caregiver of the deceased and who claimed to always be with the deceased, could not recall any of the dates when the deceased was admitted to hospital.

    13.3. It was put to this witness that she only stayed at the deceased's home for a brief period of one week and left after she found out the deceased was HIV positive. The witness agreed she only stayed for one week but stated she never became hysterical when she found out the deceased was HIV positive. When asked by the court to clarify what she meant by she only stayed for one week the witness said she stayed for a week, went home for one day and returned.

    13.4. It was also put to the witness that the deceased retained a certain degree of vision until death and she stated that this was not true.

    13.5. It is worth noting as well that it was never suggested to this witness that the defendant was a constant or daily visitor of the deceased, as alleged in his witness statement so that her statement in her witness statement that he was very rarely there or that she said that deceased told her that she would never leave the house for the defendant remains uncontroverted. Of course, to my mind, this was a rather important matter for the defendant to have challenged as it forms the basis of his assertion that he was close to the deceased and that, therefore, the Will was in keeping with her known affections.

THE DEFENDANT'S EVIDENCE

ROGER RANSOME

14. In his witness statement the defendant stated that the deceased was his stepmother, having lived with his father Nathanial Ransome and the deceased since he was just three years of age. He stated that the deceased was the only mother that he knew and that those outside of his family believed the deceased to be his biological mother. He said that the deceased eventually married his father and travelled to New York while he was

in secondary school before returning to Trinidad where she lived with his father until he passed away in 2001.

15. It was the defendant's evidence that after his father's death the deceased continued to live at the address and was fully independent, looking after all of her domestic and financial affairs. He said that he visited her on a daily basis. He said further that the deceased fell ill a year after his father's death. He said that the deceased often told him that when he died all she had was for him and in that regard she started organizing her financial affairs by placing his name jointly on her account at First Citizens Bank and then by taking him to her attorney's office in Chaguanas to settle her estate. That attorney, now deceased, was named Mr. Victor Hosein. He said that one morning when the deceased was due for clinic at the San Fernando General Hospital she told him that she was feeling ill and that she wanted to put in writing that whatever she owned she was leaving to him. Interestingly he noted that the deceased had "*an up and down experience and often would want to write a will when she was very ill and seemed to forget about it when she felt better*".

16. According to him, the deceased and the claimant did not speak to each other for several years prior to the deceased's death and that her sister did not attend her funeral even though he informed her of the passing of the deceased and the funeral arrangements. He said that he made all the funeral arrangements and paid all the expenses relating to the funeral from his finances and from the finances held in the joint account he kept with the deceased.

17. The defendant said that on Tuesday February 15th he received a call from an attorney, one Mr. Bert Legere, asking him to come to his home to pick up a will for the deceased. He said that he went to his home and the attorney stated that the deceased gave him instructions a few weeks earlier and had insisted that it was an urgent matter that should be dealt with immediately. He said Mr. Legere was ill and incapacitated and instructed him as to how the Will should be executed. He then took the Will to the deceased who was being visited by the two attesting witnesses at the time. He said he was present when the will was read to the deceased by his cousin. He offered to ask for a stamp pad from the nurses' station at the hospital seeing that the deceased was weak but the deceased insisted that she wanted to sign the will herself. He said that the deceased was evidently in her right mind and seemed in control notwithstanding her illness. He said that he had no involvement in the signing and reading of the will. After it was signed he said that the deceased instructed him to take it to Mr. Legere for safe keeping since he would know what to do with it. He said that the signing of the will was done with the approval of the nurse.

18. He said after the death of the deceased he was advised by Mr. Legere to obtain documents for him to apply for the probate of the said will. It was his evidence that he then travelled to England for six months and was informed about the application for Letters of Administration by the claimant and therefore lodged the caveats.

19. Certain statements, revelations and inconsistencies were made during cross examination that the court took note of:

    19.1. When asked if the deceased became ill while caring for the defendant's father he said no she only suffered with high blood pressure and slight problems with her eyesight but was otherwise healthy

    19.2. The witness said he stopped living home in 1997 as he moved to San Juan to be closer to his job but returned home ever so often.

    19.3. When asked if the witness fell ill *after* his father's death he said no and his witness statement was shown to him to show the inconsistency and he said the illness was related to her being an elderly person.

    19.4. When asked what he meant by he visited her on a daily basis, he wavered significantly. The exchange with attorney for the claimant was as follows:

    ""Q: You say that you visited her on a daily basis do you understand what that means? Every single day without fail! You still want to say that?
    A: Well that was the effort... I would go everyday and from time to time it may be that I could not go but I would make it up
    Q: You know what daily is?
    A: Yes
    Q: And you maintain that?
    A: Every day, as is possible
    Q: Did you go every single day?
    A: I would attempt everyday and I did go every day and I may fall short one or two days but I did go every day."

    19.5. When asked if Agnes Cuffy (also known as Cleo) ever came to take care of the deceased, the defendant admitted that was so but said that was in 2004.

    19.6. He stated that the deceased retained her vision although she had problems with her eyesight. When asked if he wouldn't know how well the deceased could actually see, he stated "*well, there are different types of blindness*".

    19.7. He admitted, in relation to him saying that there was no communication between the deceased and the claimant, that when he was not with the deceased every hour of the day and could not say what she was doing when he was not there but he said that he could say with "*a margin of certainty*" any communication would have had to have been conducted by telephone and he was aware of the telephone bills so he knew they did not speak on the telephone, although no bills were produced.

    19.8. He said he told the claimant of the deceased death and he remembered because the claimant told him not to have a wake because they were Spiritual Baptist. He admitted he never told the claimant where the deceased was buried.

    19.9. It came out in cross examination that Mr. Legere who prepared the Will was the defendant's godfather . In his witness statement, the defendant merely

described Mr. Legere as being "*well known in my village and has been a friend of my family for some time."*

19.10. When asked about the circumstances leading up to him collecting the Will from Mr. Legere, he said that Mr. Legere knew that he was going to the hospital on that day. He also stated that his aunt and cousin were always with the deceased during visiting hours.

19.11. He stated that Mr. Legere never told him to ask a doctor to sign the Will so he did not.

19.12. He admitted that the deceased was "frail and weak" and had "succumbed to AIDS" on the day she signed the alleged Will

19.13. The court asked the defendant if he knew the identity of the nurse who gave permission for the deceased to sign and he said he did not because the nurse did not want to get involved. The nurse did not read the document.

19.14. What was of especial concern was the defendant's nonchalant approach in respect of the deceased after she was raped and then diagnosed as being HIV positive. The impression of closeness which the defendant sought to convey to this court seemed to have been dealt a severe blow by what transpired after this very serious and life-changing incident. It was quite obvious that this incident had a profound effect upon the deceased yet there was no change in the defendant's pattern of behavior nor did he find the incident serious enough to warrant him moving back in with a person who, according to him, was the only mother he knew and to whom he looked for counsel, support and maternal guidance.

CELIA WILLIAMS-SIMPSON

20. This witness stated in her witness statement that she was very well acquainted with the deceased as she had been in contact with her for over 30 years. She said that the deceased was married to her uncle Nathanial Ransome, making her the defendant's cousin. She said that the defendant took care of the deceased during her illness and that he was the person closest to the deceased. It was her evidence that she too visited and cared for the deceased when the defendant could not assist in her care. According to this witness and in contradiction to the evidence of the defendant, the deceased was "in need of constant care" due to the fact that she was HIV positive. It was her evidence that she knew the deceased had a sister in the United States but that she had never met her.

21. According to this witness on 15th February 2005 she was at the San Fernando General Hospital visiting the deceased together with her aunt and while there the defendant also visited and brought with him the Will from Mr. Legere and indicated that it needed to be read signed and witnessed by two persons. This witness said that she read the Will to the deceased and she indicated the deceased indicated that she was satisfied and

wanted to sign it. She said that she agreed to witness the Will with her aunt. She stated that the deceased signed in the wrong place first then signed in the correct place. She said that as far as she was aware the deceased was in a very collective state of mind when she signed the alleged Will.

22. Certain statements, revelations and inconsistencies were made during cross examination that the court took note of:

    22.1. This witness, who stated that she knew the deceased for over thirty years, admitted in cross-examination that she did not visit her at her home but only at hospital and not every day. She admitted also that she did not know who cared for the deceased after her husband died. This is in stark contrast to the impression she sought to create in her witness statement where she stated:

    > *"I am aware of the fact that he took care of the deceased during her illness he was the person that was closest to her and who ensured that her personal care needs were met. I also visited her with my aunt from time to time and was instructed by Roger when he was unable to come and see her due to his work commitments to assist in her care.".*

    22.2. She stated that the defendant did not call her before he came to the hospital.

    22.3. She said that it took her a few minutes to read the Will and she was about two to three feet away from the bed when she read it. she said the deceased "*was looking at what I was reading*".

    22.4. At one point the witness stated that the deceased "*would have had glasses on*" and was not blind and then later on when asked again if she had on glasses said "*No*".

    22.5. She said she met her aunt at the hospital and her aunt was right next to her when she read the will and the defendant was on the other side of the bed.

        22.5.1. When asked to take the court through the sequence of the day, she stated that "*Roger came and met my aunty and he asked how his aunt was and he told us he got the thing from the lawyer*". To the court, this seems to suggest that there was some conversation beforehand as to the Will because what else could the "thing" be and for it to be referred to as such suggests that there was a common understanding as to what the "thing" was.

    22.6. She was asked if she knew where to sign when she saw the Will and she said she did not and when asked if she saw Rosalyn's signature, she said "Yes". The witness was asked who signed first and she said Rosalyn. When asked again specifically "*Rosalyn was the first person to sign that document*?" she said "Yes", giving the impression that Rosalyn signed even before the deceased . She later said *"when time for witness to sign she signed first"*

(referring to Rosalyn) thereby attempting to clarify what she meant by Rosalyn signing first.

22.7. The witness said that the defendant and her aunt held up the deceased to sign the Will.

22.8. She was shown the original Will and the scribbles on the Will and the fact that the deceased signed twice and she stated that the deceased signed twice because "it wasn't looking proper". She could not say who told the deceased to sign another time.

22.9. On the Will, there were two scribbles to the left of the deceased's purported signature and the witness could not say who put them there.

ROSALYN MARTIN

23. Rosalyn Martin in her witness statement claimed to be acquainted with the deceased for over thirty years as she was married to her brother and was the aunt of the defendant. In her witness statement she stated that her nephew, the defendant, was always in charge of the deceased's affairs even before she became ill.

24. She said that on Tuesday 15th February 2005 she was at the San Fernando General Hospital visiting the deceased when the defendant visited and brought along the Will and indicated that the Will was to be signed and witnessed by two persons. She said that her niece read the Will to the deceased who then indicated that she was satisfied with the contents and wanted to sign it. She stated that the nurse on duty only gave them permission to sign the will upon confirmation by the deceased that she wanted to sign the will. No other witness stated this. She said that the deceased was supported while signing the will. She also stated that the deceased signed in the wrong place first then signed in the correct place after her niece pointed it out to her. She too stated that to the best of her knowledge the deceased was in a collective state of mind when she signed the alleged Will.

25. Certain statements, revelations and inconsistencies were made during cross examination that the court took note of:

25.1. She stated that the defendant was at the deceased's house constantly but under cross examination she admitted that she only saw him when she was there and she was not there constantly. She stated she did not know "Cleo" but also did not know if anyone else other than the defendant took care of the deceased. This is quite significant since this witness stated that the deceased required constant care and, by the defendant's own admission, he was not living with the deceased after 1997 and was not always able to visit every day so that it is obvious that someone else would have had to have looked after the deceased.

25.2. She stated that she visited the deceased during the week of the 15th February about twice for the week and she did not expect to see her niece.

25.3. When the witness asked who showed the deceased the Will at the hospital she said she could not remember. She recalled however that the deceased said he had "*the document*".

25.3.1. This corroborates her sister's initial claim that the deceased walked in and announced he had the "thing". In effect there is a suggestion that there was a pre-discussed plan to bring the Will on that date.

25.4. She stated that the defendant stood next to them in front the bed while her niece read the Will. This contradicts what her niece said.

25.5. She could not remember if the deceased had on glasses at the time the Will was read.

25.6. She stated it took about 10 minutes to read the Will as it was a long document.

25.6.1. Upon perusal of the alleged Will, the document was not indeed a long document. It was one letter sized page long with 6 short paragraphs.

25.7. She stated that the deceased signed the document first.

SUBMISSIONS

THE CLAIMANT'S SUBMISSIONS

26. The claimant submitted that the onus of proving that a will being propounded was executed as required by law lies upon the party propounding the will and quoted ***Moonan v Moonan (1965) 7 WIR 420*** in support of this submission. The claimant also stated that once there is evidence which casts doubt upon the validity of that presumption in any case, its conscience cannot or should not be satisfied without some affirmative proof (***Alvarez v Chandler (1962) 5 WIR 226***). The claimant submitted that the defendant is seeking an order that the court pronounce for the force and validity of the Will and therefore was bound to prove that it was duly executed.

27. It was submitted by the claimant that the attorney who prepared the Will was not called as a witness to testify and that there was no proof that the deceased gave instruction for its preparation. It was also submitted that the witnesses did not satisfy section 42 of the **Wills and Probate Act chap 9:02** as the signature of Rosalyn Martin appears twice in the alleged Will.

28. On the deceased's health the claimant submitted that no medical report was tendered about the deceased's health but it was agreed that she was elderly, week and frail and suffered from Acquired Immune Deficiency Syndrome (AIDS) and was bedridden at the time that she signed the Will. The claimant submitted the case of ***Re Simpson, Schaaniel v Simpson 1977 121 Sol Jo 224*** whereby it was stated that where a testator is elderly and infirm his Will should be witnessed and approved by a medical practitioner.

29. On the issue of whether the claimant knew and approved of the contents of the Will, it was submitted the court must not approve of a will if there is any suspicion about the circumstances under which the will was prepared. In support of this submission the cases of ***Moonan v Moonan 7 WIR 420, Fuller v Strum [2000] EWCA Civ 1879 and Ramcoomarsingh v Administrator General (2002) 61 WIR 525, Barry v Butlin (1838) 2 Moo PCC 480*** and others were submitted. This suspicion according to the claimant was not dispelled.

30. Therefore it was the claimant's submission that the court ought to pronounce against the force and validity of the Will.

THE DEFENDANT'S SUBMISSIONS

31. The defendant submitted that there is no evidence that the defendant was in any way involved in the preparation of the will as the claimant contends, which is necessary in this case. In support of this submission the defendant submitted the case of ***Re: Holligans's estate, Wilson and Another v Parris (1983) WIR 224***. It was submitted also that both witnesses attested to the fact that the defendant was the primary and only caregiver to the deceased. It was also submitted that the deceased had suggested preparing a Will in the defendant's favour prior to this time and he dissuaded her much like the case of ***Ramcoomarsingh v Administrator General (2002) 61 WIR 525***.

32. It was submitted that it was plausible that the deceased would seek to devise her property to the defendant having regard to their relationship and having regard to the fact that the claimant showed little involvement in or knowledge regarding the affairs of the deceased.

33. On the issue of the non attendance of the attorney and lack of written instructions the defendant submitted that the absence of the attorney was accounted for at paragraph 15 of the defendant's witness statement, so too the lack of written instruction. In any event it was submitted that under the law set out in ***Ramcoomarsingh*** the lack of written instructions is of no consequence since the evidence of both witnesses confirmed that the Will was read over to the deceased and she understood and approved its contents. In considering this authority of the Privy Council, the court bears in mind that the secretary prepared the will in that authority gave evidence of its preparation whereas in this case, the actual preparation of the will was not the subject of any witness statement save as mentioned below.

34. On the issue of the lack of medical evidence the defendant submitted that in ***Re: Holligans's estate, Wilson and Another v Parris (1983) WIR 224*** the Court of Appeal upheld the validity of a will executed by a 71 year old who was ill and hospitalized. The defendant submitted that each case must be decided on its own merits and that this case is distinguishable from those cases where the findings of suspicion were upheld.

ISSUES

35. A statement of agreed issues was filed on 28th October 2011 and the following were highlighted as the issues to be considered by the court.

    35.1. Whether the deceased was of sound mind and memory and understanding when she purportedly executed the Will dated 15th February 2005

    35.2. Whether the Will was executed in accordance with the law.

    35.3. Whether the deceased knew and approved of the contents of the Will.

    35.4. Whether the execution of the Will was obtained by undue influence or fraud.

36. These issues would be dealt with by the court but in the order as set out below.

WAS THE WILL EXECUTED IN ACCORDANCE WITH THE LAW?

37. ***Barry v Butlin (1838) 2 Moo Pcc 480*** is applied by this court when considering the execution of the will. The burden of proof lay with the defendant. This burden would be discharged by proof of due execution.

38. Under section s.42 of the ***Wills and Probate Act ch. 9.03*** certain requirements must be fulfilled for a will to be considered valid:

    38.1. The will must be in writing; and

    38.2. Made by a person of the age of twenty one years or more;

    38.3. The will must either be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction;

    38.4. Such signature must be made or acknowledged by the testator in the presence of two or more witnesses of either sex competent to attest a will according to the law of England, present at the same time; and

    38.5. Such witnesses must attest and subscribe the will in the presence of the testator and of each other but no form of attestation shall be necessary.

39. The first three limbs of section 42 being satisfied, the court must determine whether the signature was made or acknowledged by the testator in the presence of two or more witnesses and whether the witnesses attested the will in presence of the testator.

40. The Will was type written allegedly by Mr. Legere. There are six paragraphs in the Will with spaces in between. Following the six paragraphs is the attestation clause. To the right of the attestation clause there is the signature of Rosalyn Martin, a scratched out scribble, what purports to be the largely illegible signature or the deceased of which the name "Erma" seems legible but the "Ransome" appears to be almost indecipherably scribbled. To the right of these signatures are two additional scribbles in pen. Below this is a portion for the name, address and occupation of the two witnesses. Clearly written is Rosalyn Martin's name address and occupation and below that is Celia Williams

Simpson's name, address and occupation. On top of the second set of words "Name address and occupation" appears what can only be interpreted as the deceased's feeble attempt to write her last name. To the right of the signature of Celia Williams Simpson are the words "San Fernando" which appears to be written by someone other than those who have signed the document. The Will, which fits comfortably on one page was, by the defendant's accounts, given to him by Mr. Legere and so it was not prepared and executed in one sitting.

41. The court has three issues with the Will as presented:

    41.1. The signature of Rosalyn Martin appears twice,

    41.2. One of the signatures of Rosalyn Martin appears above the signature of Erma Ransome.

    41.3. The signature of the deceased appears suspicious and is affixed to the document twice. The nature of the deceased's sprawling and illegible signature suggested that she was unable to properly see what was being written and that it was being blindly written from memory rather than from a state of conscious visually confirmed handwrting.

42. Rosalyn Martin in her witness statement and under oath stated that she signed the document in the wrong place first and then signed the document in the correct place.. For her part, Rosalyn Martin stated that the deceased signed the document first. The defendant also stated that the deceased signed first. A negative inference could be drawn from the fact that the signature of Rosalyn Martin was above the signature of the deceased and the court could find that there is an inference that this witness signed the document first, but since all three persons present have alleged that the deceased signed first the court will accept it. Furthermore the court will accept that the deceased signed at least before Celia Williams Simpson as the signature of this witness seems to be indented so as to accommodate the scribble or what can only be viewed as an attempt by the deceased to sign her name.

43. It would be remiss of the court if it also did not mention the fact that the deceased signed on top of the words "Name, address and occupation". This seems to corroborate the fact that the deceased could have been sight impaired and afflicted with severely impaired vision and does not, to the mind of the court, seem as though she was merely signing in the wrong place. It gives the impression that she could not see where she was supposed to have affixed her signature and was wholly mistaken and blind to the fact that the signature was being affixed on top of pre-typed words.

44. On a balance of probabilities, however, this court holds that the document was signed by the deceased in the presence of the witnesses and each other in compliance with section 42 as the court is satisfied that whatever act of signing transpired, it was done by the deceased in the presence of the two named witnesses.

WAS THE SIGNATURE OBTAINED BY UNDUE INFLUENCE OR FRAUD?

45. The claimant did not lead enough evidence for this court to determine that the deceased was unduly influenced to sign the Will or that there was any fraud involved in its execution. This court dealt with the standards of proof necessary to establish these allegations in the cases of ***Hickson v Cumberbatch & ors*** - CV 2008 – 00099 [Unreported] in respect of forgery/fraud and ***Ward v Bhagwandeen & or*** – HCA 3335 of 2003 [Unreported] in respect of undue influence, and is of the view that these allegations cannot be substantiated by the evidence available to the court at this time.

WAS THE DECEASED OF SOUND MIND, MEMORY AND UNDERSTANDING?

46. The real issue that the court must determine is whether the deceased had the requisite mental capacity to complete and execute the alleged Will. The test for mental capacity is laid down in ***Banks v Goodfellow (1870) L.R 5 QB 549.*** In that case it was stated that mental capacity means that the testator must be of "sound disposing mind and memory". In essence what must be determined is that the deceased had sufficient mental capacity to understand the testamentary act. It is not necessary that the testator's mental powers are reduced below the ordinary standard. What is important is that she had a sound disposing mind and memory. In ***Barry v Butlin (1838) 2 Moo Pcc 480*** it was determined that the burden of proving this lies with the person propounding the will. To this end the defendant's evidence as to the deceased's mental capacity is paramount.

47. Roger Ransome stated that the deceased while in the hospital room was "frail and weak" and had "succumbed to AIDS". All of the witnesses stated that the deceased had to be held up while she executed the will. Nowhere in his witness statement did he say that his aunt indicated that she understood fully the contents of what was being read to her while in the hospital, however It was his evidence under cross examination that the deceased indicated that she understood what was read to her. Apart from the lay opinions of his two witnesses, no medical proof was given as to the fact of the deceased's capacity. Under cross examination he also indicated that he asked a nurse's permission to execute the document. It is interesting that this witness also indicted that he did not ask the nurse to sign as a witness and also that the nurse did not want to participate. The court wonders how he would know the nurse did not want to participate if he did not ask her.

48. Celia Williams Simpson also indicated that the deceased was weak while at the hospital and had to be held up while she executed the alleged Will. She stated that the nurse on duty gave them permission to allow the deceased to sign the Will although under cross examination this witness admitted that the nurse was not privy to the contents of the

alleged Will. She stated that she read the Will to the deceased who indicated her satisfaction with the contents and told them that she wanted to sign. It was noted in cross examination that she stated that the deceased was satisfied and not that the deceased understood the contents and she indicated that she meant understood. What the court finds interesting is that nowhere is it stated how the deceased showed or indicated that she was satisfied. The defendant's final witness gave similar evidence also stating that the deceased indicated she was "satisfied" with the contents.

49. In the case of ***Re Simpson, Schaaniel v Simpson 1977 121 Sol Jo 224*** it was determined that where a testator is elderly and infirmed, his will should be witnessed and approved by a medical practitioner. In this case there was no medical evidence to show that the deceased who, by all accounts, was severely afflicted by disease and so frail that she could not hold her own body weight up to sign the document, was of sound mind. The court must base its analysis solely on the evidence before it. No medical records or evidence was led by either side to establish the nature of the deceased's health in terms of medical references or information nor was any attempt made to ascertain the medication with which the deceased was being treated at the time, if any. In those circumstances, it is quite difficult, if not impossible, for the court to reach a finding as to whether or not the deceased was of sound mind at the time. The burden lies on the person propounding the will to dispel any doubts which may arise in the court's mind. What is not clear to this court is the extent to which a medical practitioner, familiar with the deceased's condition at the time, would have certified the deceased's soundness of mind.

50. This court has recently discussed the issue of old and infirmed testators signing a will whilst in hospital in the case of ***Oriscia Balbosa v Teresa Balbosa*** – CV2010-00370 (Unreported). In that case, a will was executed at the hospital after instructions were reportedly given to an attorney at law. The will was witnessed by the attorney at law and by a doctor but this court, in that matter, refused probate in solemn form of the will as this court was not satisfied that the burden of proof as to the propriety of the will had been sufficiently discharged by the party propounding it. This court, in that matter, considered the circumstances under which the testator in that matter would have been belaboring and this court proceeded to make certain comments about the desired procedure which ought to be adopted by an attorney at law in those circumstances. Amongst the procedures outlined was a determination of the health of the testator whilst being in that hospitalized condition and an understanding of the medication being administered to treat the testator. This court recognized then and recognizes now that a testator who is being treated with medication may very well be unable to have the proper frame of mind to appreciate the consequences and effects of the document placed before him/her for signature in such a state.

51. In this case, there was absolutely no attempt whatsoever to ascertain the deceased's medical health and condition or to determine the nature of the medication with which she was being treated. No attempt was made to seek or obtain the consent of the attending physician but, instead, reliance was placed on the opinions of two laypersons

– the two witnesses to the Will – and the self serving opinion of the defendant to say that the deceased seemed collected and mentally capable. None of these witnesses demonstrated any expertise in this regard so that their opinion on this point is wholly rejected by this court. None of them could claim any familiarity with the deceased's treatment history nor could they say whether she was under any medication at the time which could have affected her mental faculties in any way. The fact the defendant did not even seek to call this nurse as a witness to the deceased's mental capacity also plays on the mind of the court.

52. Furthermore the one independent witness who could otherwise possibly have attested to the fact that the deceased gave instructions and was possibly capable of executing a will, the attorney Mr. Legere, was not present before the court and no efforts were made at all to produce a witness statement from him. The court understands that Mr. Legere may have been infirmed at the date of trial but a medical certificate certifying his unavailability attached to a hearsay notice could have been filed and a witness statement provided to the court. This was not done and, to me, this speaks volumes to the bona fides of this whole transaction.

53. The doubts which have arisen as a result of the failure to elicit a statement in writing or at all from Mr. Legere stems from the fact that all of the defendant's evidence in respect of the instructions for the will, the contents thereof and much of the matters in relation to Mr. Legere's involvement, if at all, came from the defendant's unsubstantiated hearsay statements in his witness statement. It is passing strange in any event that this obviously ailing woman could have attended Mr. Legere's home unaccompanied without anyone else's knowledge and have given instructions to prepare a will urgently and, yet, nothing is done for several weeks. In any event, no evidence was produced in relation to Mr. Legere's alleged illness or incapacity. Consequently, this court disregards the following contents of the defendant's witness statement, save for the instances referred to in this judgment:

    53.1. Paragraph 10:

    "*On Tuesday 15th February, 2005, I received a call from Mr. Bert Legere, an attorney – at – law, asking me to come to his home to pick up a will for my step-mother Erma Ransome to sign.*"

    53.2. Paragraph 11:

    "*… Mr. Legere told me that the deceased had given him instructions a few weeks earlier and had insisted that it was an urgent matter and that he should deal with it immediately.*"

    53.3. Paragraph 12:

    "*Due to the fact that he was ill and incapacitated at that time he instructed me as to how the will should be executed…*"

    53.4. Paragraph 15:

"*After the death of the deceased I was advised by Mr. Legere to obtain certain documents for him to apply for probate of the said will, all of which I got for him……*

Mr. Legere had some difficulty finding it since he did not have an office and did not seem to know where it was. He eventually found it and explained that it was among his papers. He also claimed that he had mistakenly written on the back of the will while it was in his safekeeping. The said Mr. Legere is ailing and unable to move around, due to his ill health."

54. Further, no explanation was given whatsoever as the inclusion of Mr. Lloyd Vincent as an executor of the Will – a person who was completely unknown to all of the parties and witnesses in this mattter.

55. It is also highly suspicious to the court that the defendant said that the same Mr. Legere stated that the deceased gave him the instructions "a few weeks earlier" and instructed him that it must be dealt with immediately yet the Will was not ready until, coincidentally, the defendant was going to the hospital to see the deceased, and where again coincidentally two witnesses were present to sign the document even though, according to the defendant, Mr. Legere was not informed by him that the deceased was in the hospital.

56. The burden lay squarely with the defendant to show that the deceased had the mental capacity to execute the will. Having regard to all of the evidence and pleadings before this court and bearing in mind the observations made by the court in relation to the evidence of each witness as set out above, the court is not impressed by the evidence led by the defendant and his witnesses and finds that evidence to be unreliable save for the issue of the document being signed as mentioned above.

57. The defendant's purported evidence of being the loving and supporting step-son did not gel with his responses in cross examination nor with the other evidence before the court. Much of what he had to say was unsubstantiated and was hearsay such as the view that neighbours had of his relationship with the deceased (which would have gone some way, possibly, toward establishing the deceased's known affections from independent sources), the allegation that the nurse approved of the document being signed, the visit to Mr. Victor Hosein and the interaction with Mr. Legere. What was of concern was that the defendant, allegedly, had access to the deceased's bank accounts and documents yet he failed to produce any document signed by the deceased other than the 1997 identification card and, of course, the Will. It would have been so easy for him to have produced any other document signed by the deceased in between that period to debunk the claimant's assertion that the deceased was unable to sign documents.

58. Further, the two witnesses to the will gave "cut and paste" evidence in chief which was shaken in cross-examination as mentioned above. By "cut and paste" evidence, this court means that the witness statements of these two witnesses were identical in content and were obviously just duplicated without regard to the actual evidence which may have been applicable to each individual witness. Such an approach to presenting evidence before a court is not a true reflection of what the particular witness may have to say as was quite evident from the discrepancies uncovered in cross-examination.

59. The court was therefore not impressed by the evidence from the defendant and when compared to the other evidence before it, this court prefers the claimant's version, including that of Mrs. Charles-Cuffy, as compared to what the defendant had to say. Mrs. Charles-Cuffy, in particular, impressed this court as a person who was telling the truth by her demeanour in the box and the ease and comfort with which she gave her evidence. She was forthright and certain of what she was saying and was not shaken by cross examination. The fact that she was not able to remember the dates of the deceased's admissions to the hospital is quite understandable in view of the length of time involved so the court does not view this as being a negative factor in her evidence.

60. As a consequence, the court finds that the defendant did not discharge the burden to prove that the deceased had the mental capacity to make a will on the 2nd May 2003 on a balance of probabilities and, in any event, there are the several matters mentioned above which raises the suspicion of the court in relation to the Will and which were not properly explained by the defendant.

THE ORDER

61. In the circumstances, the counterclaim for probate in solemn form of the Will shall be dismissed and there will be a pronouncement against the force and validity of the Will pursuant to the claim. Although the court finds conclusively that the Will cannot stand as the last will and testament of the deceased, the court cannot make an order for a grant of Letters of Administration of the estate of the deceased to the claimant at this time but, rather, the court will order that the caveats lodged by the defendant be struck out and that the non-contentious probate proceedings be continued by the claimant so that that procedure can be completed.

62. The court therefore orders as follows:

    62.1. The court pronounces against the force and validity of the alleged last will and testament of Erma Roach – Ransome , the deceased in this action, being the script bearing date 15 February 2005;

    62.2. The caveats lodged on the 25th of May 2009, 21st of January 2010 and 28th of July 2010 by the defendant against the claimant's non-contentious probate application for a grant of Letters of Administration be struck out;

62.3. The claimant shall be at liberty to proceed with her said non-contentious probate application for a grant of Letters of Administration.

62.4. The defendant shall pay to the claimant the prescribed costs of the claim quantified by the court in the sum of $14,000.00.

62.5. The counterclaim is struck out and the defendant shall pay to the claimant the prescribed costs of the counterclaim quantified by the court in the sum of $14,000.00.

Justice Devindra Rampersad

Judge