IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016 – 00509

IN THE MATTER OF THE WILLS AND PROBATE ORDINANCE

AND

IN THE MATTER OF CECELIA CHOOKOLINGO

Late of #9A Third Street, Maraval who died on the 3rd day of July 2015

at #9 Third Street, Maraval Proper, Diego Martin

BETWEEN

REX CHOOKOLINGO

Claimant

AND

DAWN FORD

GLENN CHOOKOLINGO

Defendants

Before Madam Justice Avason Quinlan-Williams

Attorneys at Law:

Colin Selvon advocate Attorney and Delicia Bethelmy instructing Attorney for the Claimant.

Michael Quamina advocate Attorney and Gitanjali Gopeesingh instructing Attorney for the Defendants.

JUDGMENT

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1. Before the court for its decision are the claims made and reliefs sought in the Fixed Date Claim Form and Statement of Case both filed on the 24th of February 2016, by Rex Chookolingo, the Claimant. The Claimant claims against Dawn Ford and Glen Chookolingo, the Defendants, certain declarations and reliefs with respect to the

estate of Cecelia Chookolingo, the deceased. The deceased died on the 3rd of July, 2015. The Claimant and Defendants are siblings and children of the deceased.

2. The Claimant claims the following reliefs:
    1) A Declaration from the Court that the deceased at the time of the execution of the later Will did not possess the necessary Animus Testandi or Testamentary capacity to so execute the said later Will.
    2) A Declaration that the first Will is the last Will and Testament of the deceased.
    3) An Order pronouncing against the force and validity of the later Will.
    4) An Order pronouncing for the force and validity of the first Will.
    5) Alternatively a Declaration that the deceased executed the later Will as a result to the undue influence of the Second and Third Named Defendant.
    6) A Declaration that the Claimant is the person entitled to apply for Grant of Probate of the estate of the deceased.
    7) An order directing the Registrar to grant to the Claimant Probate of the estate of the deceased in solemn form of Law.
    8) Costs.
    9) And any further relief that the Court may deem necessary in the circumstances.

3. The Claimant pleaded that the deceased executed two Wills. The first on the 10th of June, 2014 (the first Will) and the second, (the second Will) on the 13th of November 2014. The Claimant claims that in early June 2014, the deceased told him that she wanted to make a Will. Upon getting that information, the Claimant took the deceased to Attorney at Law, Mr. Badrie-Maharaj. The deceased gave the attorney at law instructions but fell ill and had to be hospitalized before she was able to return to the attorney's office and execute the first Will. The attorney at law, upon the instruction of the deceased, attended at West Shore with Dr. M. V. Rao. In the presence of the Attorney at Law, Dr. Rao and the Claimant, the deceased executed the first Will. In this first Will, the deceased named the Claimant as her sole executor. Among her bequest, the deceased devised and bequeathed her personal articles to the Claimant. The deceased also devised and bequeathed all her other property (expected those

specifically devised and bequeathed to named beneficiaries) to her children including the Claimant. This first Will the Claimant seeks declared as the last Will of the deceased.

4. The Defendants filed a defence on the 14th of July 2016. In that defence they averred that the last Will and testament of the deceased is the second Will executed on the 13th of November 2014. Before this second Will was executed, the Attorney at Law, Ms Annabelle Sooklal requested a cognitive assessment and it was carried out by Dr. Olivia Dalla Costa in September 2014 before the second Will was executed. In the second Will, the deceased named her friend Gemma Chu Hin and two of her children, the Defendants as the Executors and Trustees of her last Will and Testament. The deceased devised and bequeathed her estate to various beneficiaries but made "no provision for my sons REX CHOOKOLINGO, DANIEL CHOKOOLINGO AND PARAS CHOKKALINGAM for reasons of which they are aware"[1].

THE LAW

5. ***Section 42 of the Wills and Probate Act Chap. 9:03*** which provides the following

> ***42.*** *Save as herein before provided, no Will executed after the commencement of this Act shall be admitted to probate or annexed to any letters of administration or be deemed to have any validity for any purpose whatsoever unless such Will is in writing and executed in manner hereinafter mentioned, that is to say,—it shall be made by a person of the age of twenty-one years or more, it shall either be signed at the foot or end thereof by the deceased or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the deceased 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 such witnesses shall attest and subscribe the Will in the presence of the deceased and of each other but no form of attestation shall be necessary. No person shall be a competent witness to any Will executed or purporting to be executed after the 16th of May 1921, who has attested such Will by making a cross or mark or otherwise than by his signature in his own proper handwriting.*

[1] Will dated 13th November 2014. Last paragraph.

6. Section 42 of the Wills and Probate Act therefore requires for a Will to be lawfully executed there must be proof that:

    a. The Will must be in writing and made by the deceased;
    b. The Will is executed by being signed at the foot or end of it by the deceased or by some other person in his presence and by his direction;
    c. The signature (or mark) must be made by the deceased or acknowledged by him in the presence of two or more witnesses; and
    d. Two or more witnesses must be present at the time the deceased affixed his signature (or mark) and they attested and signed the Will in the presence of the deceased and of each other.

7. As it relates to undue influence in **Moonan v. Moonan (1963) 7 WIR 420** Wooding C.J. (as he then was) in delivering the decision of the court confirmed that the burden to satisfy a court that the Will was lawfully executed is on the proponent of the Will. When there are allegations such as undue influence, Wooding C.J. said at page 421 "It is a common place proposition of law that undue influence must not only be specifically alleged but also affirmatively proved. And the essence of undue influence is coercion - coercion inducing the making of the dispositions by the Will under challenge".

8. There is also the issue of testamentary capacity or animus testandi. Whether the deceased at the time of the making of the Will was of sound mind, memory or understanding, goes to the testamentary capacity of the deceased. The burden of proving testamentary capacity is also on the proponent of the Will, **Moonan v. Moonan (1963) 7 WIR 420**. There is also the issue of the deceased knowing and approving the contents of the Will. With respect to knowing and approving of the contents of the Will, this plea assumes testamentary capacity and is different from undue influence. Knowing and approving of the contents of the Will means that the dispositions made reflect the free intentions of the deceased **Moonan v. Moonan (1963) 7 WIR 420**.

9. Later, in **Lucky v Thomas-Vailloo HCA.No. Cv 1396 of 1996, page 16,** Stollmeyer J (as he then was) summarized the applicable principles when considering due execution and knowledge and approval of a Will as follows;

    1) The onus of proving a Will as having been executed as required by law is on the party propounding it;
    2) There is a presumption of due execution if the Will is, *ex facie*, duly executed;
    3) The force of the presumption varies depending upon the circumstances. The presumption might be very strong if the document is entirely regular in form, but where it is irregular 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 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."

10. The legal requirement concerning the validity of a Will; whether the deceased had the mentally capable of understanding what he is doing when he makes his Will and that the devises and bequeathments contained in the Will reflects what he wants done with his estate in **Hawes v. Burgess [2013] EWCA Civ. 74 Mummery** LJ said at paragraphs 11 and 12 says the court should ask the following questions, firstly with respect to the mental capacity to understand what the deceased was doing.

1) Did the deceased understand the nature of the act;
2) Did the decease understand the extent of the property of which she was disposing; and
3) Was the deceased able to comprehend and appreciate the claims to which she out to give effect.

And secondly to knowledge and approval of the contents of the Will:

1) Do the circumstance of the Will arouse the suspicions of the Court as to whether its contents represent the wishes and intentions of the Deceases as known to and approved by her; and
2) Has scrutiny of those circumstances by the court dispelled those suspicions.

ISSUES

11. In this matter the issues for determination are as follows:

1) Whether the Claimant, as the party propounding the first Will, has discharged the onus of proving that the first Will had been executed as required by law.
2) Has the Claimant discharged the onus of proving that the deceased lacked animus testandi when she executed the second Will. Particularly the allegations of lack of animus testandi are:
    i. Age of the deceased
    ii. Inability to recall the name of the Claimant and remember other important dates and stopping of regular activities
    iii. Inability to recall and appreciate the nature and extent of her assets
    iv. Inability to recall the date and day of the week
    v. Memory loss and the need for every day, round the clock supervision
3) Has the Claimant discharged the onus of proving that there was undue influence on the deceased when she executed the second Will. Particularly the allegations of undue influence are:
    i. Fearful of influence of defendants.
    ii. Isolating the deceased from the Claimant and certain other family members.
    iii. Denying the deceased medical attention.

4) Whether the Defendants as the parties propounding the second Will, have discharged the onus of proving that the second Will had been executed as required by law.

EVIDENCE

Claimant's Case

12. The Claimant was the only witness. The Claimant's evidence in chief was contained in his witness statement filed on the 30th of June 2017. His evidence was that he was named the sole Executor of the first Will dated the 10th of June 2014. This first Will, according to the Claimant, was prepared after the deceased told the Claimant, in early June, that she wanted to have a Will done. In June of 2014, the Claimant's evidence is that he was in control of the Claimant's affairs as she did not trust the Defendants or her other children. The Claimant took the deceased to see Attorney at Law, Mr. Badrie-Maharaj. The deceased gave the lawyer instructions. However she fell ill and had to be hospitalized. The Claimant made arrangements for the lawyer to attend to the deceased at the hospital. The Claimant also made arrangements for one Dr. Rao to attend the hospital to witness the execution of the first Will. According to the Claimant, "At the hospital Dr. M. V. Rao asked the deceased questions in my presence and in the presence of Mr. Varude Badrie-Maharj after which the deceased executed the first Will in the presence of Mr. Varude Badrie-Maharaj. Dr. M.V. Rao and myself"[2]. Later that month the deceased again fell ill and was hospitalized on the 1st of July 2014. The Claimant alleged that he found the deceased in an unresponsive comatose like state. He contacted Dr. Rao who examined the deceased and recommended that she be taken immediately to the hospital.

13. The Claimant alleged that there was objection to the deceased being taken to the hospital but that she was eventually taken to West Shore. The deceased remained at West Shore for about eight (8) days. The Claimant's evidence is that after the deceased was discharged from West Shore, he visited her on a daily basis and made certain observations about the deceased. The Claimant observed that the deceased no longer

[2] Claimant's statement. Paragraph 6.

followed her usual routine. She did not have her usual conversations, nor did she read the newspapers or watched her favourite television shows. The Claimant also observed that the deceased suffered memory loss and a lack of mental alertness and awareness which continued to the time of her death. The deceased was no longer aware of her assets and did not give the Claimant the usual instructions about what she wanted done with the rental income. The Claimant's evidence is that the deceased was unable to recall the date and day of the week.

14. The Claimant observed that the deceased needed round the clock care regarding her daily and regular exercises such as combing her hair, eating, taking daily baths and remembering to take her medication as prescribed.

15. The Claimant's evidence is that the deceased, on numerous occasions, mentioned to him that "she was fearful that the defendants together with other family members were only waiting for her to die"[3].

16. The Claimant's evidence is that the Defendants together with other family members restricted his access to the deceased by preventing him from going into the deceased's home and preventing him from communicating with the deceased. The Claimant alleged that he was evicted from the deceased's home towards the end of 2014.

17. The Claimant's evidence is the deceased was denied access to health care. As a consequence he spent considerable sums of the deceased's money and his own money to provide her with health care. The Claimant annexed receipts, in a bundle, to his witness statement, they were marked R.C. 7. The receipts cover the period June 2014 to December 2014. The Claimant did not say how much of his own money he spent and how much of the deceased's money he spent.

18. The Claimant annexed a number of documents and "medical reports" from Dr. Rao, these are:

[3] Claimant's statement. Paragraph 18.

1) R.C.3. This letter is not dated. It states that he was present on the 10th of June 2014 at the West Shore Medical Hospital with Mr. Vaude Badrie-Maharaj. He states that he examined the deceased and "found her to be of sound mind as Mr. Badrie-Maharaj explained the change in her Will to her. She appeared to have understood what was said to her, and placed her right hand fingerprint to signify her approval of the said document".

2) R.C.5. This document titled "MEDICAL REPORT", is dated the 13th of August 2014. It is stated to be a testimony of the condition of the deceased on the 10th of August 2014. It relates having examined her on the 1st of July 2014 when he found her to be in a comatose state. He saw her on the 5th and the 7th of July 2014. On the 7th of July her prognosis was determined to be poor and it was agreed "not to actively pursue the cause" and "to stop all attempts to prolong her life". The report states that he next saw her on the 10th of August 2014. He observed that "she was remarkably improved from the time I saw her in July at West Shore Hospital". He noted that having known her for the past 12 years "she was not the same physically or mentally the same as she was before the events that transpired on July 1, 2014… and she did not appear to have the cognitive skills necessary to make decisions that required thought".

3) R.C. 6. This is dated 12th of August 2014. This gives a brief account of his observations from April 2014 to August 2014. The account states that in April 2014, the deceased suffered from anaemia that required her to have a blood transfusion but that otherwise she was in reasonably good health, had the ability to take care of herself, and was of sound mind. It does not say what day he examined the deceased that caused him to form the opinion "Furthermore, she is mentally incompetent to make everyday decisions concerning her health and is dependent on others around her to make decisions for her".

19. The Claimant was cross-examined. The Claimant admitted that since he returned to Trinidad the deceased had been cared for by nurses. He also admitted, after refreshing his memory from his witness statements that he did not say that either Defendant

told the deceased what to put is the second Will. He also admitted that he also did not say that either Defendant influenced their mother about what to put in the second Will. The Claimant admitted that in another matter, brought by him after the death of the deceased, where he challenged a Power of Attorney given by the deceased, that he did not say that she did not have her cognitive abilities, he admitted that he did not say anything about her mental state. He also admitted in that other matter, that he said he visited the deceased daily. He explained that what he meant was that he saw her every day during the month of August, thereafter he was prevented from seeing her. The Claimant also admitted that when he spoke about not collecting the rent he did not say that the power of attorney that was given to him by his mother had been revoked. His evidence is that he did not know that the power of attorney had been revoked. The Claimant also admitted that he was not in a position to challenge the findings of Dr. Costa.

Defendants' Case

20. The Defendants called two witnesses. Dr. Dalla Costa and Attorney at Law Annabelle Sooklal, Dr. Dalla Costa produced a medical report date the 29th September 2014. She is a palliative care doctor. She was employed to manage the deceased's final days at her home and to provide for her medical needs as she transitioned. However the deceased, instead, improved to the extent that she no longer needed a palliative care doctor, or palliative care for that matter. On the request of the family, Dr. Costa conducted a thirty (30) questions test to test the deceased's cognitive ability - she passed it with ease. By this time the deceased had been under her care for three and a half months. The test is called a mini mental exam - it is a standard exam. It is used to assess a cognitive function and for dementia. Dr. Costa's evidence was that she did not know why the test was done nor is she required to know why a mini mental exam is required. Dr. Costa said that by the 29th of August 2014, the deceased was able to do the exam, but physically she was still weak. The deceased made slow and steady progress and eventually she got more unhappy, she was fed with a feeding tube and she pulled it out.

21. Attorney at Law Annabelle Sooklal's, evidence in chief was contained in her witness statement filed on the 30th of June 2017. Her evidence is that she first met with the deceased on the 22nd of August 2014. She went to her home and took instructions. At the time of the taking of those instructions, no one else was present with her and the deceased. The Attorney requested and received a copy of a medical report from the deceased's attending physician confirming her testamentary capacity. The Attorney next went to the deceased's home on the 13th of September 2014, she again met with her alone and review the issue of the preparation of the Will. The Attorney again met with the deceased on the 18th of September 2014. At that time the Attorney presented a draft Will to the deceased. The deceased gave further instruction about monies held in back accounts and what she wanted her testamentary disposition to be with respect to those monies. The Attorney returned to see the deceased on the 4th of November 2014 with another draft Will. Again she met with her alone and took further instructions. She returned with a draft on the 14th of November 2014. As was customary the Attorney met with the deceased alone, read the draft and took further instructions. Pursuant to those instructions the Attorney prepared a Will and returned to the deceased's home on the 14th of November 2014. She met with the deceased alone, read the Will, ensured that the deceased was fully satisfied with the contents of the Will. The Attorney then asked the caregiver to join them where the deceased was seated. The deceased, the Attorney and the caregiver were all present together when the deceased affixed her thumb print to the second Will. The Attorney and the caregiver then signed the second Will in the presence of the deceased and each other. All the draft Wills were annexed to the Attorney's witness statement.

22. The Attorney was cross examined by Attorney at Law for the Claimant. Ms. Sooklal said that she was satisfied of the deceased's capacity to make a Will. She was satisfied on two basis, the first was the medical report she received. Second, Ms. Sooklal said that she satisfied herself by her interaction with the deceased over the period of the months that they met. The deceased was able to give instructions, understand the draft Wills, give further instructions and knew when she was satisfied that a version was representative of how she wanted to dispose of her property.

ANALYSIS AND FINDINGS

Was the first Will executed as required by law?

23. The deceased was the mother of the Claimant and the Defendants. The Claimant and the Defendants were not her only children. The deceased had eleven (11) children alive at the time of her death. The evidence about the execution of the first Will comes from the Claimant and the hearsay evidence admitted for Dr. D. V. Rao. There is not sufficient evidence for the court to determine whether the execution of the first Will was done according to law. The Claimant's evidence is that he was present when the first Will was executed. The Claimant was named as the sole executor and a beneficiary of that first Will. Those two factors are sufficient to raise a suspicion in the court's mind. That suspicion has not been dispelled by any evidence adduced by the Claimant. Another factor that raised a suspicion is the different provisions made in the first and second Will particularly regarding the Claimant. The suspicion aroused by that also has not been dispelled by any evidence adduced by the Claimant. Because of all the circumstances that have raised suspicion, the court required affirmative evidence of knowledge and approval of the contents of the first Will executed by the deceased while she was hospitalized[4]. The court gave no weight[5] to the "document" from Dr. Rao which is annexed to the Claimant's witness statement and marked R.C.1. This document purports to recount that the Doctor was present when the first Will was executed, however it is not dated. It is not known whether it is a contemptuous record or not. That fact is important to aid in understanding whether the contents are reliably reproduced or not. Further it does not say that the first Will was read over to the deceased. The fact that the deceased placed a mark leads one to conclude that she could not read or write. Even if this is an incorrect conclusion, it is important that the Will is read over to the deceased. What Dr. Rao said was that done is that the Attorney merely "explained the change in her Will to her". There is no evidence before the court for the court to be satisfied that the first Will was made by the Deceased.

Lack of Animus testendi

[4] See Williams on Wills. Volume 1. Tenth Edition. Paragraph 5.3.
[5] See Section 41 (3) Evidence Act Chapter 7:02

24. The year the deceased is alleged to have executed both the first and the second Wills her age was 86. It is difficult to see how the deceased's age could be an issue for the second Will and not the first as claimed by the Claimant. The Claimant's evidence is that he was barred from visiting the deceased after August of 2014. The Claimant has the burden of proving that the deceased lacked animus testandi when she executed the second Will. However no evidence was adduced for the court to make this finding. Neither the Claimant nor Dr. Rao saw the deceased after August 2014 and the second Will was executed in November 2014. There was no credible evidence led by the Claimant to discharge the onus on him that the deceased did not know the Claimant's name or was otherwise forgetful.

Undue influence

25. The Claimant also has the onus of proving that the deceased was subject to undue influence such that the second Will did not reflect the intentions of the deceased. The Claimant has not led any evidence for the court to be satisfied on a balance of probabilities that this occurred. In the opposite, the Claimant does not know what occurred during the months of August to November 2014 as he claims he was barred from seeing the deceased. The bequeathments in the second Will do not raise any suspicion that any one person or other or more stood to benefit in any way that caused the court concerns. Further as it relates to undue influence, the Claimant said under cross examination, that he has not led any evidence of any undue influence.

26. In the first Will the deceased appointed the Claimant as her sole Executor and made provisions for a number of her children and a few other persons. In the second Will, the deceased appointed one of her friends and two of her children as joint Executors of her Will and made provisions for some of her children and other persons. As it relates to undue influence, the Claimant said under cross examination, that he has not led any evidence of any undue influence.

27. If that is compared to the execution of the first Will it is noted that when the first Will was executed the deceased was hospitalized at West Shore. This would quite naturally raised concerns for the Court. That fact alone, is not sufficient for the court to

conclude that the first Will was not lawfully executed. What concerns the court more was the circumstances surrounding the actual execution. The Claimant's evidence is that he was present when the first Will was read to the deceased by the Attorney and when the witness Dr. Rao is alleged to have examined her. There is no reason why the deceased should not have been in a position to have that discussion in private, nor was one offered. Further the circumstances surrounding the deceased's giving instructions to the Attorney have not satisfied the court, on a balance of probabilities that the deceased knew the contents of the first Will. On the Claimant's case, the proponent of the first Will, the issues of testamentary capacity or want of knowledge and approval are raised. The court is not satisfied on a balance of probabilities, that the onus on these issues have been discharged by the Claimant.

The second Will

28. Even if the first Will was lawfully executed, the second Will, if lawfully executed, would have revoked this first Will. The Defendants are the proponents of the second Will and have the burden to prove that it was lawfully executed. In a dispute such as this, involving siblings and a sizable estate, it is easy for one to conclude the each side will have a self-serving interest in what is said and what is done. In that regard the evidence of each witness can be dissected and micromanaged to garner a list, much more extensive is some cases that others, of inconsistencies, contradictions and implausibility. There are other situations where the evidence just has a ring of truth, it just makes sense the way it is explained that things happened.

29. Then there is the evidence of persons with no horse in the race. No stakes to bet on and no interest in the results. That is the evidence of independent witnesses. The court paid particular attention – in resolving this claim, as it related to the execution of the second Will, the court considered the evidence of those independent witnesses.

30. First, Dr Rao's evidence was admitted via a hearsay notice. Dr. Rao issued three medical reports, the first report was dated the 13th of August 2014. That first report is that he saw the deceased on the 1st of July 2014 before she was taken to West Shore and her condition was dire. He next saw her on the 10th of August 2014, when her

condition had “remarkably improved”. Dr. Rao also submitted a “medical” dated the 12th of August 2014. This report is vague as to what examination or examinations Dr. Rao conducted on the deceased and on which the findings are based. Dr. Rao stated “Furthermore, she is mentally incompetent to make everyday decisions concerning her health and is dependent on others around her to make all decisions for her”. The report does not contain any information as to how Dr. Rao arrived at this opinion. Also Dr. Rao’s opinion cannot extend to the month of November 2014, he did not see nor examine the deceased at or near the time she executed the second Will.

31. The deceased was admitted to West Shore on the 1st of July 2014 and discharged on the 8th of July 2014. Even Dr. Rao admitted that her improvement was “remarkable”. The last day Dr. Rao saw the deceased was on the 10th of August 2014. Dr. Rao’s evidence, as noted before, was vague in important respects. From the time Dr. Rao last saw the deceased and up to the time of the execution of the second Will, from all accounts, the deceased had made remarkable improvements. Those improvements were such that the deceased no longer needed to be in the care of a palliative doctor.

32. Second, Dr. Dalla Costa. She is a specialist in the field of palliative care. She did not know the deceased before she became her Doctor. She came to know her in the course of her professional duties. That was at a time when the family and the medical professionals were preparing for the patients demise, which seem to all to be close and inevitable. As things unfolded, Dr. Costa’s specialist care was not need in the usual way of her professional services. Dr. Costa provided two medical reports. The first was on the 26th of August 2014. That report spoke of the remarkable improvements in the condition of the patient. The second report was dated the 29th of September 2014 which spoke of a mini mental examination that she performed on the patient. Dr. Costa reported that the patient passed with ease and that she was assertive and quite capable of telling her nurse and care givers what she does and does not want.

33. Third, Attorney at law Annabelle Sooklal. She personally took instructions from the deceased on multiple days. On those days was no one else was in the room. The deceased gave the instructions unaided and unassisted by anyone. The Attorney at

Law, requested a report from her attending physician to confirm her testamentary capacity. This was obviously as a result of the client's age, her medical condition and the nature of the estate of the deceased and the number of potential beneficiaries and the relations and relationship among them. The attorney took further instruction on the 13th of September 2014; again she met with the deceased alone. Between this initial meeting and this second meeting, the deceased was medically examined by Dr. Costa. A draft Will was prepared and the attorney took it to the deceased on the 18th of September 2014; once again the attorney met with the deceased alone to review this first draft Will. The deceased provided further instructions to the attorney, unaided and unassisted, and the attorney went away to act on the instructions of the deceased. A revised draft, the second draft, was prepared and taken to the deceased on the 4th of November 2014. Between the preparation of the first and second draft Wills, the deceased was examined for the second time by Dr. Costa; this test was the mini mental examination which the deceased passed with ease. Again the attorney met with the deceased alone. The deceased reviewed the second draft Will and gave further instructions, unaided and unassisted. The attorney went away to act on her further instructions. The attorney returned to the deceased on the 12th of November 2014 with a third draft Will. Yet again the attorney met with the deceased alone. The deceased reviewed the third draft Will and gave further instructions, unaided and unassisted. The attorney went away to act on her further instructions.

34. The attorney returned on the 13th of November 2014 with the final draft, of the second Will. The attorney met with the deceased alone to review this final draft. The draft was executed by the deceased in the presence of the attorney and Ms. Pierre, a caregiver of the deceased. The attorney's evidence is that "prior to the execution of the said Will by Cecelia Chookolingo, the same was read over to her by me and at such time Cecelia Chookolingo thoroughly understood the same and approved it."

35. The attorney's evidence is that while she required a medical report she also made her own assessment of the deceased's capacity based on her interaction with the deceased. She had conversations with the deceased about everyday events as well as taking instructions for the preparation of the Will. She was satisfied that the deceased

was compos mentis and quite capable of giving instructions. Each time the attorney met with the deceased the meeting lasted at least one hour. On each occasion the attorney read the draft Will and the deceased gave her input. The attorney's evidence is that she read the drafts and the second Will to the deceased line by line and got her comments or confirmation that the provisions aligned with her intentions and the instructions she had given to the attorney.

36. The Court was satisfied on a balance of probabilities that the second Will was lawfully executed by the deceased.

DISPOSITION

37. Having considered all the evidence adduced, the submissions made on behalf of the Claimant and the Defendants and the relevant law, the court is not satisfied on a balance of probabilities that:

    1) The Claimant, has discharged the onus on him of proving that the first Will, dated the 10th of June 2014, had been executed as required by law.
    2) The Claimant discharged the onus on him of proving that the deceased lacked animus testandi when she executed the second Will, on the 13th of November 2014.
    3) The Claimant discharged the onus on him of proving that the deceased was unduly influenced when she executed the second Will, on the 13th of November 2014.

38. Having considered all the evidence adduced, the submissions made on behalf of the Claimant and the Defendants and the relevant law, the court is satisfied on a balance of probabilities that:

    4) The Defendants have discharged the onus on them of proving the second Will executed on the 13th of November 2014, was lawfully executed.
    5) The Will dated the 13th of November 2014 is the Last Will and Testament of the deceased CECELIA CHOKOLINGO Late of #9A Third Street, Maraval who died on the 3rd day of July 2015 at #9 Third Street, Maraval Proper, Diego Martin.

39. Costs to be paid by Claimant to the Defendant.

Dated this 8th day of March 2018

JUSTICE QUINLAN-WILLIAMS
JUDGE