[2024] JMSC Civ 171

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021ES00873

IN THE MATTER OF THE ESTATE OF KENUTE VALENTINE HARE, DECEASED

AND

IN THE MATTER OF ALL THAT PARCEL OF LAND PART OF CONSTANT SPRING ESTATE IN THE PARISH OF SAINT ANDREW REGISTERED AT VOLUME 1533 FOLIO 318 OF THE REGISTER BOOK OF TITLES

BETWEEN	**TASKA HARE**	**CLAIMANT**
AND	**SIDNEY DE ROUX (Executor in the Estate of Kenute Valentine Hare)**	**1ST DEFENDANT**
AND	**BALMAIN BROWN (Executor in the Estate of Kenute Valentine Hare)**	**2ND DEFENDANT**

IN OPEN COURT

Jalil Dabdoub and Ms Karen Dabdoub instructed by Messrs. Dabdoub, Dabdoub & Co., Attorneys-at-Law for the Claimant

Ms Judith Clarke instructed by Judith M. Clarke and Co., Attorneys-at-Law for the Defendants

Heard on: July 6, 7 and 15; September 22 and October 7, 2022; November 23, 2023 and June 10, 2024.

PROBATE - LAST WILL AND TESTAMENT - FAILURE TO FILE COUNTER- NOTICE TO PROVE DOCUMENTS UNDER RULE 28.19 OF THE CIVIL PROCEDURE RULES ('CPR') - THE EFFECT OF A FAILURE TO FILE A COUNTER NOTICE – WHETHER THE SIGNATURE APPEARING ON THE PURPORTED LAST WILL AND TESTAMENT IS THAT OF THE DECEASED OR A FORGERY – EXPERT EVIDENCE - REVOCATION OF PROBATE

REID, ICOLIN J.

BACKGROUND

[1] Kenute Valentine Hare ('the deceased') died on January 2, 2015. The deceased was married to Grace Hare, and their marriage was dissolved on April 28, 2000. He was survived by 14 children, six of whom are the product of the union with Grace Hare, and the remaining eight from other relationships.

[2] The Claimant, Taska Hare, is one of the deceased's daughters from his other relationships. The 1st Defendant, Sidney De Roux, and the 2nd Defendant, Balmain Brown, are the executors of the deceased's last will and testament dated June 27, 2002 (hereinafter referred to as 'the purported will'). In the purported will, the deceased bequeathed properties located at 6 Norbrook Way, Kingston 8 registered at Volume 1533 Folio 318 of the Register Book of Titles (hereinafter referred to as 'the Norbrook home') and at 35 Galloway Road, Kingston 13 registered at Volume 1120 Folio 553 of the Register Book of Titles (hereinafter referred to as the 'the Galloway Road property') to Grace Hare and the six children of the marriage.

[3] On February 27, 2017, a Grant of Probate was issued to the named executors in the purported will in respect of the deceased's estate. On February 24, 2020, the deceased's Norbrook Property was registered on transmission to the executors of

the deceased's estate under the said Grant of Probate. In or around November 2020, the executors sought to distribute monies belonging to the estate and contacted the Claimant for her to collect a cheque for $24,709.62, which represented her portion. Consequently, on April 16, 2021, the Claimant commenced proceedings by way of a Fixed Date Claim Form followed by an Amended Fixed Date Claim Form filed on June 2, 2022 challenging the validity of the will on the assertion that the will was forged as the signature thereon was not that of the deceased and was therefore null and void and of no effect.

THE CLAIM

[4] The Claimant sought several orders to include the following:

> *"1. An order that the Grant of Probate of the purported last will and testament of Kenute Valentine Hare dated the 27th of June 2002 in Suit No. P. 01476 of 2016 is hereby revoked;*
>
> *2. A declaration that the purported last will and testament of Kenute Valentine Hare dated the 27th of June 2002 is null and void and of no effect for reason that the alleged Will is a forgery, as the signature thereon is not that of the deceased Kenute Valentine Hare.*
>
> *3. A declaration that the purported last will and testament of Kenute Valentine Hare was procured by fraud;*
>
> *4. An order to rectify the Transmission No. 2218563 entered on 24th day of February 2020 on the Certificate of Title registered at Volume 1533 Folio 318 of the Register Book of Titles;*
>
> *5. An injunction restraining any dealing or change of ownership in respect of certificate of title registered at Volume 1533 Folio 318 until the final determination of this claim;*
>
> *6. An injunction restraining the Defendants and/or their agents from interfering with the assets of the estate, taking steps to dispose of the assets of the estate, entering on any premises held legally or beneficially by*

the estate of Kenute Valentine Hare or otherwise dealing with the assets of the estate;

7. *An order that the Defendants give an accounting of all of their dealings with the assets in respect of the estate of Kenute Valentine Hare.*

8. *An order that Letters of Administration be granted to the claimant in the estate of Kenute Valentine Hare."*

[5] The Claimant relied on the evidence of handwriting expert, Beverley East, who found that the will was a forgery and therefore fraudulent. The Claimant particularized the fraud as follows:

"(i) The deceased Kenute Valentine Hare did not sign or make the purported will dated the 27th June 2002.

(ii) The signature purporting to be of the deceased on the alleged Last Will and Testament of Kenute Valentine Hare, is not that of the deceased.

(iii) The Second Defendant being an alleged witness to the purported will knew or ought to have known that the deceased did not sign or make the purported will nor did the deceased authorise its making by or on his behalf.

(iv) The Second Defendant being the drafter of the purported will knew or ought to have known that the deceased did not sign or make the purported will nor did the deceased authorise its making by or on his behalf.

(v) Despite items I, ii, ii, and iv of the Particulars of Fraud herein, the Second Defendant in applying for and obtaining a Grant of Probate from this Honourable Court in respect of the purported will of Kenute Valentine Hare now deceased, has defrauded the rightful beneficiaries of Kenute Valentine Hare deceased, of their true and just inheritance.

(vi) The Grant of Probate dated the 27th of February, 2017 to the Defendants was derived from the last will and testament of Kenute Valentine Hare dated the 27th of June, 2002 which was procured by fraud.

(vii) The Defendants caused the Transmission No. 2218563 to be entered in respect of all the estate and interest of

Kenute Valentine Hare under a Grant of Probate which was procured by fraud.

(viii) The Defendants actively continue to administer the real and personal estate of Kenute Valentine Hare under the Grant of Probate which was procured by fraud.

(ix) As a result of the fraudulent actions of the Defendants, the Claimant and the children of the deceased who would be beneficiaries in the estate of Kenute Valentine Hare under the laws of intestacy, are substantially prejudiced and are deprived of the benefits of the estate.

(x) The Defendant, in probating the purported will, has fraudulently misrepresented to this Honourable Court and the beneficiaries of his estate, that the purported Will was in fact that of the deceased.

(xi) The Defendant perpetuated this fraud by his continued reliance on and utilization of the said Probate and purported Will to deal with the assets of the deceased in a manner prejudicial to the beneficiaries of his estate."

[6] During the pre-trial proceedings, several interim injunctions were granted on various dates pending the determination of the matter. They were as follows:

(1) An interim injunction was granted restraining the Defendants whether by themselves and or/their servants and/or agents from transferring, disposing or otherwise dealing with the property in respect of ALL THAT parcel of land part of Pinfold Pen in the parish of Saint Andrew being lots numbered 28 and 29 on the plan of part of Pinfold Pen aforesaid deposited in the Office of Titles on the 25th day of August 1926 of the shape and dimensions and butting as appears by the plan thereof hereunto annexed and being the land comprised in the Certificate of Title registered at Volume 1120 Folio 4553.

(2) An interim injunction is granted restraining the Defendants whether by themselves and/or their servants and/or agents from transferring, disposing or otherwise dealing with the property in respect of ALL THAT parcel of land part of Constant Spring Estate in the parish of Saint Andrew being the land

comprising the Certificate of Title registered at Volume 1533 Folio 318 of the Register Book of Titles.

(3) An interim injunction is granted directing the Defendants to cease and desist whether by themselves and/or their servants and/or agents from any act that will interfere with the other estates, entering on any premises held legally or beneficially by the estate of Kenute Valentine Here or otherwise dealing with the assets of the estate.

THE CLAIMANT'S CASE

[7] The Claimant relied on evidence contained in her witness statement filed on January 7, 2022, Ms Beverly East's reports dated June 29, 2015, and January 12, 2022, the witness statement of Richard Hare filed January 7, 2022, and oral evidence from Claudette Wright. The witness statements and reports were admitted as their evidence in chief and all, except for Claudette Wright, were cross-examined.

THE DEFENDANTS' CASE

[8] In response to the claim, the Defendants filed an Amended Defence wherein they denied the allegations of fraudulent procurement of the deceased's will and disputed the Claimant's entitlement to a Grant of Administration or any relief claimed. The Defendants contended that the will was validly executed by the deceased and in support of their position, they relied on two witnesses which included the 2nd Defendant and Monica Adams-Duhaney (also known as "Monica Adams"). Their witness statements both filed on January 6, 2022 were admitted as their evidence in chief and they were cross-examined. The 1st Defendant did not file a statement.

[9] Numerous documents were also admitted as exhibits 1-18. I have read and considered all the evidence but only the portions which I find essential and pertinent will be noted in the analysis.

SUBMISSIONS

Claimant's Submissions

[10] Counsel on behalf of the Claimant, Mr. Jalil Dabdoub and Ms Karen Dabdoub, indicated that the main issue to be determined by the Court is the authenticity of the signature appearing on the testator line of the disputed will dated June 27, 2002. Counsel relied on the learned authors of **Tristram and Coote's Probate Practice, 20th edition** in submitting that it is settled law that the Court has the authority to revoke a grant of probate made to an executor of a forged will. Counsel pointed out that a document that appears on its face to be in order should be presumed to have been properly executed unless evidence to the contrary proves otherwise. Counsel cited section 6 of the Wills Act, section 3 of the Forgery Act, and relied on the cases of **Re Estate of Delahunty** [2021] IEHC 657 and **Paul Griffiths v Claude Griffiths** [2017] JMSC Civ 136 ('**Paul Griffiths**'), indicating that the maxim *omnia praesumuntur rite esse acta* only applies where there is no proof one way or the other as to the manner of the execution of a disputed will.

[11] Counsel therefore submitted that the issue as to whether a disputed will was or was not duly executed is purely a question of fact and should be decided on the balance of probability after all circumstantial and direct evidence has been weighed by the Court and all relevant circumstances have been considered. He added that if the evidence suggesting that due execution of the disputed document was tenuous, it may be rebutted by evidence that would not ordinarily be sufficient to displace a document's validity. Counsel contended that on an overall assessment of the evidence, it has been established on a balance of probabilities that the disputed will was a forged document. This was based on:

(a) The evidence of the purported execution of the disputed will was weak and not credible.

(b) The frank and truthful evidence of the Claimant and Richard Hare; particularly as to their acquaintance with their father's signature; and

(c) The credible evidence of the expert, Beverley East, and the strong contextual, factual and circumstantial evidence against the execution of the disputed will.

[12] Counsel whilst relying on the case of **Crawford and others v Financial Institutions Services Ltd** [2005] UKPC 40 alluded to the fact that the 1st Defendant failed, neglected, and or refused to give any evidence, and such failure was a strong indication that he had no satisfactory answer to what was alleged against him.

Defendants' Submissions

[13] Ms Judith Clarke, counsel on behalf of the Defendants, agreed that the single issue arising in the case is whether the will of the deceased was a forgery and was therefore invalid. Counsel refuted the Claimant's assertions and submitted that in consideration of section 6 of the Wills Act, it was clear from the Defendant's evidence that the formalities for the due making and execution of a will had been met. She contended that, except for the allegation that the will was a forged document, there were no challenges to its validity relative to compliance with these formalities. Ms Clarke argued that the essential question, therefore, to be addressed, was the weight to be ascribed to the expert evidence of Miss East as a matter of law and fact.

[14] Learned counsel indicated that CPR Part 32.3 has prescribed that "*an expert witness must help the court impartially on matters relevant to his expertise".* She submitted that Part 32.18 of the CPR makes plain that expert evidence was not gospel, therefore, an expert or an assessor appointed by the court who gives oral evidence may be cross-examined by any party. She contended that for the expert's evidence to find favour with the Court or be of any support, in the final analysis, it must withstand and transcend the rigours of challenge by other evidence when tested for truth, congruence and credibility concerning all other evidence. Counsel pointed out that the assessment of expert evidence was as much a matter for the

trial judge as was the assessment of all the other evidence before the Court. She submitted further that it was having regard to this approach that the Honourable Mr. Justice Batts "preferred" the evidence of the ordinary witnesses in the case of **Sarah Montague v Derrick Willie and another** [2012] JMSC Civ. 179 (‘**Montague v Willie**’) over the expert report of the said Miss East.

[15] Counsel Ms Clarke further submitted that the court, in coming to its determination as to facts, must have due regard to the undisputed evidence that the deceased made provisions for his outside children before making the will. She highlighted that, when asked why he was not considering his other children in the making of the will, the deceased told the 2nd Defendant that he had made provisions for his other children as depicted on the certificates of title. He showed the transfers of properties into their names. Counsel contended that the mention of Andrea Hare by the Claimant and the admission into evidence of the birth certificate of Andrea Hare cannot, by themselves, detract from the force of this aspect of the evidence. She argued that there can be no presumption in the existence of the birth certificate listing the deceased as her father that at all material times (including the time of the transfers and the date of the will), the deceased counted and countenanced Andrea Hare as one of his children. Counsel added that there was no helpful evidence in this regard. Suffice it to say that it was apparent from the actions of the deceased in distributing his assets, that he made specific provisions for his ex-wife, to whom he had been married between 1963 and 2000 and with whom he had sired six children. They were to inherit the main house where the family resided.

Claimant’s rebuttal submissions

[16] In light of the Defendants’ submissions, Counsel for the Claimant made a preliminary point that the Defendants' submissions relied upon statements that were not in evidence (para. 1 of their rebuttal submissions) and therefore submitted that the Court ought to disregard those statements when determining the claim. Counsel also reiterated and maintained the argument that the Defendants were

now seeking at this late stage to challenge the authenticity of the documents containing the known signatures. Counsel pointed out that the Defendants failed to file a notice to prove or illustrate any such challenge and by virtue of this failure, they have admitted the authenticity of the documents. As a result, no issue was joined between the parties as to the authenticity of those documents, and therefore no evidence was required to prove matters concerning the source or origin of those documents. Reliance was placed on sections 19 and 20 of the Evidence Act.

[17] Counsel further submitted that it was settled law that under CPR 28.19, in the absence of a notice to prove, documents disclosed to a party were deemed authentic by admission. Counsel relied on the cases of **Darnel Fritz v John Collins** [2021] JMCA Civ 3 and **Linel Bent v Eleanor Evans** Suit No. CL 1993/B115, delivered February 27, 2009. Mr. Dabdoub emphasized that the known documents were in the list of documents filed in January 2022 and they were also labelled K1-K3 and contained in the 2015 expert report disclosed in November 2021. Counsel contended that the Defendants first questioned the authenticity of the documents during the trial, and that throughout the proceedings, the Defendants were consistent in leading the Claimant and the court to believe without question that the authenticity of the documents was not in dispute. Counsel submitted that the consequence of failing to file a notice to prove under CPR 28.19 is that the party was deemed to have accepted the authenticity of the documents.

[18] Additionally, Counsel challenged the Defendants' reliance on the authority of **Montague v Willie** (*supra*). Counsel noted that Batts J's decision was grounded on several factors which swayed his finding that, on a balance of probabilities, he preferred the evidence of the witnesses. It was therefore Counsel's submission that the case of **Montague v Willie** (*supra*) provided no assistance to the court in determining this claim, as they were determined on their own particular sets of facts.

Defendants' rebuttal submissions

[19] In response to the Claimant's submission, Miss Clarke admitted to some inaccurate representations of the evidence. She argued, however, that it would not have a significant bearing on the court's appreciation of the case. The crux of her rebuttal dealt mainly with how to treat the authorities cited in the Claimant's submissions and the evidence.

[20] Counsel Miss Clarke pointed out that the cases of **Crawford and others v Financial Institutions Services Ltd** (*supra*) and **In Re Estate of Delahunty** (*supra*) were entirely irrelevant to the case at bar. Counsel asserted that **Paul Griffiths** (*supra*) was also determined by its peculiar features. She argued that the trial judge in **Paul Griffiths** having made her un-forensic assessment of the handwriting, the learned judge rightly pointed out that the burden to prove the forgery was on the party alleging it and "*convincing evidence is required for that burden to be discharged*"*.* Counsel pointed out that in that case, the conflicts between the witnesses seemed hopelessly irreconcilable along with other peculiar factors and therefore, the court determined that the case "*fell to be determined on the evidence regarding the signature on the will itself".* The court in **Paul Griffiths** (*supra*) preferred the evidence of the handwriting expert. Miss Clarke contended however that in the case at bar, the attesting witnesses gave cogent evidence as to the due execution of the will.

[21] Counsel also argued that, if this court finds itself having to do its own "naked eye" test, it was submitted that there was an obvious, unavoidable resemblance in the appearance of the "K" and the "H" and other letters in the signature on the disputed will and the signature on exhibits 14A and 15A. Counsel pointed out that the signatures on these various documents were made over long intervals in 1996, 2002, and 2008. She added that the possibility of some variations occasioned by matters such as time, posture, etc., if these were discerned, was palpable. Counsel argued, however, that the documents merely formed part of the expert's report without any foundation from the Claimant herself or her witness as to their source

and origin and so, in the circumstances, evidence as to how the expert came to define them as "known" documents was quite in order.

ISSUE

[22] I find that the main issue for determination is whether the signature appearing on the purported Last Will and Testament dated 27 June 2002 is that of Kenute Valentine Hare or whether it was obtained by fraudulent means.

PRELIMINARY ISSUE

[23] Before such a determination can be made, I find it necessary to consider an issue which was raised very early in the trial by the Defence upon the cross-examination of Miss Beverley East. Much time was spent on this issue and submissions were received from both Counsel. The Court made a ruling. The issue was whether, by the Defendants' failure to file a Notice to Prove Documents pursuant to rule 28.19 (2) of the CPR, they have been deemed to admit the authenticity of the documents served in the Notice under rule 28.19; and thereby precluded from challenging the authenticity of these documents. Instinctively, the follow-up question is whether the Court ought to accept the authenticity of these documents given the Defendants' failure to serve the Notice pursuant to Rule 28.19(2).

[24] These documents were referred to by Miss East as 'known documents' (K1-K4) of the 2015 report and Counsel for the Defendants on several occasions questioned the source of these documents throughout the trial. Counsel for the Claimant strenuously argued that Rule 28.19 of the CPR places a duty on a party questioning a document on grounds of authenticity, to give notice of the objection that the document must be proved at trial not less than 42 days before the trial. Where a party fails to serve the relevant notice, that party shall be deemed to admit the authenticity of any document disclosed to that party under Part 28.

Law and analysis

[25] Rule 28.19 of the CPR states that:

> *"(1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this part unless that party serves notice that the document must be proved at trial.*
>
> *(2) A noticed to prove a document must be served not less than 42 days before the trial."*

[26] I have not reproduced all the arguments and submissions in respect of this issue, although much time was spent on it during the trial, suffice it to say that I have considered all of them. I am guided by the Court of Appeal case of **Darnel Fritz v John Collins** (*supra*) where Brooks JA (as he then was) analysed the issue of a party's failure to file a notice requiring a document to be proven at trial under rule 28.19 of the CPR. According to His Lordship "*rule 28.19 of the CPR, provides that a party is deemed to admit the authenticity of documents in certain circumstances…By virtue of this rule, in the absence of a notice to prove, the invoices are deemed to be authentic".* Further in **JMMB et al v Vasawni et al** [2012] JMCC Comm. No 5 (1), Mangatal J opined at para. [8] that the effect of rule 28.19 of the CPR "*is to render such documents prima facie admissible or presumed admissible, so far as their genuineness and validity (as distinct from their truth), go"*. Her Ladyship went further to add that "*the claimants are prima facie entitled to have these documents…admitted into evidence as authentic and genuine"*.

[27] During the trial, when this issue was raised by the defence, I ruled in their favour. However, on further research after the conclusion of the hearing and the further submissions, I am moved to agree with the Claimant's position. I find, therefore, that it is well established that in the absence of a notice to prove, the Defendant was deemed to have admitted the authenticity of those documents disclosed and the Claimant was entitled to have these documents admitted into evidence as authentic. This meant that all the known documents that were analysed by the expert were deemed accepted by the Defendants because they did not serve a Notice to Prove.

[28] This would also relieve the court of the burden of dealing with any issue that flowed out of whether the signatures on the documents in the Notice were that of the deceased, and the familiarity of the Claimant and her brother, Richard Hare, with the deceased's signature. It also effectively dealt with the issue of the son of the deceased, Kenute Hare Jnr., being the possible author of the signatures on the known documents because he has the same name as the deceased. Having come to that conclusion, this issue is now settled, and I will not address it any further.

MAIN ISSUE AND LAW

[29] A will must have been duly executed in accordance with the formalities set out in section 6 of The Wills Act in order to be declared valid**.** Thus, the will must have been signed by the testator or on his behalf, in his presence and by his direction and such signature shall be made in the presence of two or more witnesses, both being present at the same time in the presence of the testator. The witnesses are also to sign the will in the presence of the testator. There is in this case no challenge to these formalities. The only issue at bar is whether the signature on the will purporting to be that of the testator, Kenute Valentine Hare, is truly his or whether it was a forgery and was obtained fraudulently.

[30] According to the learned authors of **Tristram and Coote's Probate Practice**, 28th edition, para. 38.10:

> *"**38.10** The burden of proving affirmative allegations impeaching the will where the fault does not lie with the testator (e.g. undue influence or fraud) is upon the party making them…"*

[31] I note that the standard of proof in matters of this nature is on a balance of probabilities, requiring convincing evidence to establish the likelihood of the event occurring, and in turn prove or disprove the allegations. In a case concerning the alleged forgery of a Will, the burden of proof lies on the individual challenging the validity of the Will. The more serious the allegations, the more cogent the evidence which is required to establish such a case. In **Beverley Lewis and Harriet Hartley v Cleveland Hartley** [2016] JMSC Civ. 34 at para. [19] the learned judge opined

that, given the gravity of allegations of fraud, the evidence required to prove fraud must be particularly cogent and strictly proved.

[32] Section 3 (1) of the Forgery Act defines "forgery" as, the making of a false document so that it may be used as genuine. Section 3 (2) of the said Act prescribes that "*A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making"*. It is trite law that once the will appears on its face, to be in order, it should be presumed to have been properly executed. This presumption is contained in the maxim '*omni praesumuntur rite et solemniter esse acta*', which means that where all formalities have been observed on the face of a document, it will be presumed that the said document was duly executed [**Williams on Wills**, Vol. 1, Chapter 13, para.13.1]. This presumption, however, can be rebutted if there is sufficient cogent evidence before the Court which calls into question the validity of the Will. Both parties relied on **Paul Griffiths** (*supra*) where at para. [53], Thompson-James, J stated that, "*the presumption applies only where there is no evidence before the Court as to the manner of execution of the Will. Where there is evidence before the Court, either proving or disproving due execution, the maxim does not apply*". Therefore, the presumption of due execution does not apply to strengthen the quality of the evidence that exists as to the execution of the relevant will. In the case at bar, evidence has been presented in witness statements and *viva voce* format as to the due execution of the will from the attesting witnesses, the 2nd Defendant and Mrs. Adams-Duhaney. I will therefore begin to assess whether this is a case of forgery or whether the Will was signed by the deceased.

The evidence

[33] The Claimant contended that the signature on the purported will was forged and was not the true signature of her deceased father. She expressed that up to the time of her father's death, they shared a very good and close relationship, and he placed full confidence and trust in her to handle his affairs and business. She was

therefore very familiar with her father's signature, as she would from time to time see him write and sign his name on documents. She was therefore shocked to find out shortly after her father's funeral in or about January 2015 that her sister Lesley had located a will purportedly made by their father, because at no point in time before his death did her father make her aware that he had made a will.

[34] The Claimant asserted that after she examined the contents of the purported will, she became suspicious and found it most unusual that her father would bequeath his principal place of residence, the Norbrook home, and the Galloway Road property to his ex-wife and only the six children that they shared. She also became suspicious because of the obvious exclusion from the purported will of all her father's other children that he did not share with his ex-wife. She stated that this was contrary to her father's wishes that the Galloway Road property and the Norbrook home were never to be sold but were to remain in the family for the benefit of all his children and to be passed on to his grandchildren and future generations.

[35] The Claimant deponed that she suspected that the will was a fraudulent document because the signature purporting to be that of her father's on the purported will did not look like his signature. Additionally, she believed that if her father intended to or did make a will, he would have retained the services of an Attorney-at-Law to assist him in doing so as he normally sought the advice of an Attorney-at-law when handling his legal, business, and personal affairs. As a result, in or about May 2015, with the support of her siblings, she engaged the services of a handwriting expert, Miss East, to examine the contents of the purported will and to provide an opinion as to whether the signature appearing on the testator line of the said will was that of her father. The report of Miss East disclosed that the signature on the document purporting to be her father's will, was not the authentic signature of her late father.

[36] The Claimant stated that all these circumstances taken together led her to believe that the purported last will was procured by fraud. She mentioned the closeness of

the ex-wife and the 2nd Defendant at her father's funeral and the general divide between the siblings in respect of whether the deceased had executed a will. She stated that in 2020, after the death of Lesley Hare, one of her siblings, she was contacted by the 2nd Defendant to collect $24,709.62.00, representing her portion of the monies which formed part of the estate which was being distributed to the 14 children of the deceased. The Claimant, Richard Hare ('Richard') and the other children of the deceased who were not children of Grace Hare ('Grace'), refused to accept their cheques from the executors. Upon making inquiries the Claimant said that she was surprised to discover that a Grant of Probate had already been obtained by the purported executors of her late father's estate and that Dr. Adolph Edwards, an Attorney-at-law, was the legal representative of the estate.

[37] The Claimant said that she was never advised that any steps were being taken to dispose of the assets of her father's estate or of her entitlement in respect of her father's estate. It later came to her attention that the purported executors were actively taking steps to dispose of the assets of her late father's estate and in or around July 2021 she discovered that the Norbrook home and Galloway Road property were being sold.

[38] The Claimant contended that the 2nd Defendant being an alleged witness to the purported will knew or ought to have known that her father did not sign or make the purported will nor did her father authorise its making. She said that the 2nd Defendant had in his possession a document alleging it to be the purported will of the deceased which he knew or ought to have known was not an authentic will. She added that by probating the purported will, he fraudulently misrepresented to this Court that the purported will was signed and made by her father.

[39] On amplification, she said that she frequented the Norbrook home, and that her father resided there after his divorce from Grace, with his daughter Roxanne. In the later part of 2003 after the divorce, Grace returned to the Norbrook home. The Claimant said that the reason that Grace was allowed to reside at the residence

after the divorce was to take care of Lesley Hare, who was sick, and needed somewhere to live.

[40] On cross-examination, she testified that the Norbrook home was the matrimonial home of the deceased and his ex-wife and their six children, but it was not only the home of the children of the marriage. She acknowledged that there was a connection between the year of divorce and the transfer of the two properties to the deceased and his children whom he did not share with his ex-wife. She said that her father told her that his wife was getting a divorce from him, and he believed that in order to protect his assets he would have added the names of his children to the title as gifts so it would show him only owning just two properties when he got to court.

[41] Richard, her brother and supporting witness, asserted that in or around the end of 1998 or early 1999, while he was still living at the Norbrook home, he overheard a conversation between his mother and his sisters, Sharon and Lesley, now deceased. Their discussion was about his mother's plan to divorce his father while ensuring that none of his 'outside' children got any of his assets or possessions, including the Norbrook home, which would only be for the benefit of herself and her six children, including him. During that discussion, his mother insisted that if his father ended up on hard times, she would never let him back into the Norbrook home once she took it from him. Richard said he confronted them about their scheme, and he made it very clear that he was going to inform his father of their intentions and about the discussion he had overheard.

[42] When he advised his father of the conversation, he suggested to him that he quickly take the necessary steps to protect himself and his interests. Based on that advice, a short time afterward in or about March 1999, his father transferred his property comprised in Certificate of Title registered at Volume 1032 Folio 567 of the Register Book of Titles to himself and his children, Taska Hare, Arlene Hare, Michael Hare, Marie Hare-Samuels. He also transferred his property comprised in Certificate of Title registered at Volume 1060 Folio 656 of the Register Book of

Titles to himself and his children Christopher Hare, Roxanne Hare, and Kenute Hare Jnr.

[43] Richard further stated that when he came back to Jamaica in 2004 his father explained to him that after their divorce, he permitted his mother, Grace and Lesley, who suffered from schizophrenia, to live at the Norbrook home because he did not want Lesley to end up on the road. Grace had fallen on hard times and had nowhere to live. Shortly after this on January 2, 2015, the locks to the doors of the Norbrook home were changed so that his father's 'outside' children who always had keys to the house, no longer had access.

[44] Richard said he did not believe that his father made a will in 2002, based on the discussions he had with him in 2004. He testified that he was familiar with his father's signature, and he knew his father's signature from doing many transactions for his father. When asked if there was anything that would assist him in identifying his father's signature, he said that the deceased had a "*special way to make his K and his H*", and he gave further explanation regarding the formation of the letters. He acknowledged his father's signature on the documents marked K1 to K4 based on the observation that his father "*makes his K the same way*". He said that the "K and the H" were his benchmarks for identifying his father's signature.

[45] During his cross-examination, Richard stated that he recognised the "K and H" on the receipt labelled as "K2" by the expert. However, when pressed he agreed that there was no 'H' on K2. He indicated that his identification of the 'H' on K2 was a mistake, as he was referring to what he knew about his father's signature.

[46] Miss Claudette Wright, Legal Officer attached to the Registrar General's Department (RGD) gave evidence for the Claimant. Her evidence was important to the extent that she presented the original of the purported last will and testament of Kenute Valentine Hare dated June 27, 2002 (Exhibit 13). The purported will had been deposited at the RGD after it was probated.

[47] The Claimant relied extensively on the evidence of Miss Beverley East, the handwriting expert, and her reports. Miss East had stated that the entire document (the last will and testament of Kenute Valentine Hare dated June 27, 2002) and the signatures on the document were written by one person. Miss East gave evidence that based on her examination of the known documents and the questioned document there were no similarities between the known documents and the questioned document. She said that her examination and analysis included consideration of letter formation, line quality, baseline spacing and movement. She agreed that over time a person's signature carried natural variations, but she emphasised that there were habitual writing patterns that would remain within the person's signature.

[48] Miss East found that there were too many significant differences in the questioned document when compared to the known documents to deem it authentic. She also found the signature of Monica Adams on the questioned document, to be inconsistent with the signature on the affidavit of Monica Adams-Duhaney filed on October 5, 2021. She said that the signature on affidavit was of a lower skilled person than the one on the questioned document.

[49] In her expert reports, the documents were identified as such:

> *"Questioned Document: Q1 – Copy of last will and testament of Kenute Valentine Hare dated June 27, 2002, purportedly signed by Kenute Valentine Hare.*
>
> *Documents with known signature provided for comparison:*
>
> *K1: Copy of notice to quit to Dawn Rainford dated 17.6.2008 signed by Kenute Valentine Hare*
>
> *K2: Copy of letter to Commissioner of Income Tax dated July 29, 1996*
>
> *K3: Copy of National Identity Card of Kenute Valentine Hare dated April 1984, signed by Kenute Hare*
>
> *K4: Copy of handwritten receipt in the name of Karen Baker, for $16,000."*

[50] The importance placed on the evidence of Miss East and her report has led me to include, in some detail, the findings of her analysis. She highlighted the seven habitual movements within the known signatures as follows:

> *"1. Open space (non-connection) between the stem of the 'K' and the branches.*
>
> *2. First 'e' in the first name starts above the baseline then angles acutely to form 'e'*
>
> *3. Second 'E' in first name almost touches 't' bar*
>
> *4. 'H' bar connects near midway of stems*
>
> *5. 'A' joins 'r' in a garland movement (from bottom)*
>
> *6. 'r' part of signature forms a wide 'v' with elevated 'a' and 'r'*
>
> *7. Rising baseline of surname."*

[51] Miss East also highlighted six significant differences that she found in her comparison of the known and questioned signatures. They were:

> *"1. The open space (disconnection) between the stem of the 'K' and the branches.*
>
> *2. The formation of the first 'e' in the first name of the question (sic)signature is elongated and runs along the baseline; In the known signatures it is shorter and more acute.*
>
> *3. The second 'e' in the first name in the questioned signature is lower (smaller when compared to the t), while in the known signatures, it is very close or touches the 't' bar.*
>
> *4. Formulation of the 'H' in the known signatures has a solid bar connecting the stems near the midpoint while in the questioned the bar starts much lower and has a broken stroke.*
>
> *5. In the known signatures the 'a' connects to the 'r' at the bottom while in the questioned document it connects at the top.*

7. *In the known signatures the baseline of the "are" in the surname completes in a wide V shape while in the questioned document the baseline of the "are" is even."*

[52] The Defendants, on the contrary, contended that the will was duly executed by the deceased, and it was valid. The 2nd Defendant gave written and viva voce evidence regarding the circumstances of the making of the Will and asserted that the Will was signed by the deceased. Mr. Brown recalled that on or about June 27, 2002, the deceased visited him at his home at 23 Arcadia Circle. The deceased brought with him a blank will form and asked him to assist him in the preparation of his will. They sat at his dining table and discussed the contents of the proposed will. The deceased asked Mr. Brown to be one of his executors and he agreed. The deceased then told him that he wished for Sydney Deroux to also be named as an executor.

[53] Mr. Brown said that the deceased told him the status of his assets and gave him precise details as to what he wished to be stated in his will. Mr. Brown asserted that he wrote the Will as dictated to him by the deceased. He said that based on the instructions that the deceased gave to him, only the six children of his marriage and their mother, Grace, were included as beneficiaries in the will. He recalled asking the deceased why he was not including any of his other children in his will and the deceased responded that he had already given them other properties by way of transfer.

[54] Mr. Brown stated further that after he wrote out the deceased's will as directed by the deceased, he summoned his helper, Monica Adams-Duhaney (then Monica Adams), who was working in his house in another room and told her that the deceased wished them to sign as witnesses to his will. In the presence of Mrs. Adams, he read aloud the will, which he had written on the Will Form, to the deceased and handed it to the deceased whereupon he also read it. He said that the deceased indicated that its contents were precisely as he had directed him to write; and in the joint presence of himself and Mrs. Adams, the deceased signed his name in the place provided on the form for the testator to sign. After the

deceased had signed his name, Mrs. Adams and himself both signed their names on the will as witnesses in the presence of the deceased and in the presence of each other. He then gave the deceased the said will.

[55] In cross-examination, Mr. Brown testified that in his capacity as banker, he would meet some quite successful businessmen and quite a few would seek his counsel in their business and some of them became his close friends. He explained that he knew the deceased for over 30 years. He said they were friends, but his counsel was not given to him in a banking capacity. Mr. Brown said he lived at 23 Arcadia Circle when he met the deceased, and he has lived there for over 15 years. He said they visited each other's houses, and it was about 5 years after he met the deceased, that he started visiting him at his home at 6 Norbrook Way.

[56] Mr. Brown said he knew 'Gracie' the deceased's former wife. He met her and knew they were divorced. He said the conversations with the deceased were not limited to social discussions, but they did not include various business interests as he had a limited business relationship with the deceased. He explained 'limited' to mean that he and the deceased had two transactions at his house, when the deceased repaired a sinkhole at the back of his premises and established a sewage for him. He denied having a banking relationship with the deceased.

[57] He was challenged by counsel Mr. Dabdoub that he was not a witness of truth. He later admitted after being shown his witness statement that he had stated before that he had a close business and social relationship with the deceased including in his capacity as a banker. He explained that as a banker, he had advised the deceased on personal matters that he (the deceased) had with National Commercial Bank with whom he had a strained relationship when the deceased's first house was going to be put up for sale.

[58] On further cross-examination, he maintained that the Norbrook home was the matrimonial home even though he knew that the deceased and Grace were divorced. He disagreed with the suggestion that the use of the term "matrimonial

home" to refer to 6 Norbrook Way was crafted for the self-serving interest of defending this claim. He said that he retired in 1998 as a banker, and he had not engaged in any private business after retiring. He was thereafter employed at Tibby's Auto Supply with varied working hours. He did not have any fixed hours of work, but he could not recall if he was working in 2002.

[59] Mr. Brown said he wrote out the will while he sat with the deceased for about 1 hour and the deceased signed the will first. He said that it had been over 2 years since he last left his house because it became difficult for him to physically move about and leave the house. He maintained that the deceased told him that his other children were provided for from his other assets and he confirmed that those transfers took place to the deceased's other children. He said that he did not know Andrea Margaret Hare and never heard of her. He agreed with the suggestion that not all the other children were provided for, and properties transferred to them. He agreed with the contents of Exhibit 17, which was the birth certificate of Andrea Hare, and which stated that Kenute Valentine Hare was her father.

[60] In response to the suggestion that Andrea Hare, daughter of Kenute Hare, was not a recipient of any property transfer, Mr. Brown responded that "*I have to go by what Mr. Hare told me*". Mr. Brown could not recall the name of the Justice of the Peace before whom he had sworn his affidavit. He was allowed to refresh his memory from the document. He then stated that Carol Fay Stoner was the Justice of the Peace. However, he said that she would have come to his house at 5D Widcome Road, to witness and sign his affidavit. He said Miss Stoner lived at 34 Arcadia Circle and 23 Arcadia Circle was his previous home, but he could not recall the last time he went to his previous home.

[61] Mrs. Monica Adams-Duhaney, the Defendants' next witness, deponed that she had been a housekeeper since 1974, for about 47 years. She met the deceased during the time that she was employed by Mr. Brown, as the deceased would sometimes visit Mr. Brown at his home. Sometime in about June 2002 while she was at work at Mr. Balmain Brown's home at 23 Arcadia Circle, the deceased came

there to visit Mr. Brown. Both Mr. Brown and Mr. Hare were sitting at the dining table when Mr. Brown called her from another room and told her that Mr. Hare was asking her to be a witness to his will. Mr. Brown read the will aloud in the presence of both herself and Mr. Hare, then he handed the will to Mr. Hare, who read it. She saw Mr. Hare sign on the will after which he passed it to her and Mr. Brown, and they both signed as witnesses in the presence of Mr. Hare. She emphasized that when Mr. Hare signed the will, all three of them were still sitting at the dining table.

[62] Mrs. Adams-Duhaney said that a copy of the will was shown to her several years later and she was able to confirm that it was the will that Mr. Hare signed in the presence of herself and Mr. Brown in 2002 because she read through it. She said that the contents sounded the same as they did in the document that Mr. Brown read aloud to her and Mr. Hare in 2002 when he called her into the dining room to witness it and she also recognised her signature on it.

[63] Mrs. Adams-Duhaney was shown Exhibit 13 (the Last Will and Testament of Kenute Valentine Hare dated June 27, 2002) and she stated that it was the will of the deceased. She said it was not the first time she was seeing that document. She indicated that based on her recollection, she did at some time place her signature on that document. She also identified her signature on the will (Exhibit 17). She also said that she knew Carol Stoner. She became familiar with her when she was working at Mr. Brown's home. She explained that when Mr. Brown needed a Justice of the Peace to sign documents Miss Carol Stoner would sign them.

[64] Mrs. Adams-Duhaney deponed that Mr. Brown lived at 23 Arcadia Circle, and she knew where Ms. Stoner lived in Arcadia Circle, down the road from Mr. Brown. Mrs. Adams-Duhaney stated that she was 70 years old and explained that over the years 2002 to 2021 her signature had changed. She added that she had arthritis in her fingers and so she found that when she was writing she had to cross out and write over things.

[65] In cross-examination, Mrs. Adams-Duhaney stated that when she began working for Mr. Brown in 1974, he lived in Orange Grove, and he was a good boss. She retired and stopped working with him since COVID. She did not remember exactly when Mr. Brown started living at Widcombe. When she started working with Mr. Brown, he was working at Scotia Bank in Mandeville, after which he moved to 23 Arcadia Circle. He was employed at Scotia Bank when he resided at Arcadia Circle. She said that Mr. Brown was working at Scotia Bank Branch Kingston Central downtown when the purported will was signed. She said he would sometimes leave home around 7:00 a.m. or 8:00 a.m. to go to work

[66] Mrs. Adams-Duhaney testified that she recalled the will that was shown to her. She did not recall the date when she first saw the will, but she remembered that she saw the will when the deceased asked her to come and sign it. She said it was Mr. Brown who called her and said Mr. Hare was calling her to come and witness a will for him. She said that was the first time that she saw the will at Mr. Brown's house in Arcadia. She maintained that "*Mr. Brown, Mr. Ken, and me were there*" when the will was signed. She did not recall which day of the week it happened because it was so long ago. She said that she worked for Mr. Brown from Monday to Friday when the will was signed, and that it happened one morning at about 7:00 am or 8:00 am. when she was in the kitchen, and they were in the dining room. She added that the rooms were nearby, and she was not far away and could see into the dining room from the kitchen. She said both Mr. Brown and Mr. Hare spoke to her. Mrs. Adams-Duhaney recalled that Mr. Hare said it was nothing for her to be scared of, he just wanted her signature there. When she went into the room Mr. Brown was not writing but he had papers in front of him. Mr. Hare was not writing anything either. She said she spent a short time in the room.

[67] Counsel Mr. Dabdoub vigorously challenged the witness about her recollection as to what happened in respect to the execution of the will of the deceased. The relevant portions read as follows:

"Q: You agree with me that Mr. Brown did not write nothing while you were in the room?

A: no he was not writing anything

Q: Mr. Hare did not write anything either?

A: I agree Mr. Hare did not write anything either.

Q: While you were in the room would it be fair to say you were the only person who wrote anything in the dining room?

A: No, I was not the only person. I was the last person."

[68] Mrs. Adams-Duhaney expressed that she and Mr. Brown read the document that she wrote on, but she did not recall anything she read in the document that day. She stated that she wrote one time on the document, and it was the only document she wrote on, in the dining room. She said after she wrote her name on the document, "*dem say thanks and I go back to my work*". She denied the suggestion that when she went into the room, she was the only one who wrote her signature on the paper. She insisted that "*Mr. Hare write and then Mr. Brown write".* She said that she saw the deceased write on the paper in the dining room, but she did not know who wrote the document.

[69] In answer to questions raised by the Court, Mrs. Adams-Duhaney said that both Mr. Hare and Mr. Brown wrote their signatures on the document. She was asked what she meant when she said that she did not see Mr. Hare write anything when she went into the living room. She responded that she did not know that the lawyer meant signature when he asked about "writing".

[70] The Court sought to find out her level of education. She said she went to an All-Age School and finished her education at Grade 9.

Analysis and Findings

Was the Will a forgery?

[71] The Claimant's evidence was that the signature on the Will did not belong to the deceased. She found support in the evidence of her brother, Richard, and Miss Beverley East. She and her brother Richard sought to put forward evidence to support her case that the deceased did not make a will. Both siblings claimed that they had a good relationship with the deceased.

[72] I have no difficulty in believing that both the Claimant and her brother, Richard, were familiar with the deceased's handwriting. While they have not presented evidence to contradict the circumstances under which the 2nd Defendant said the will was drafted, executed, and witnessed, they have raised allegations of fraud. Several authorities have emphasised that allegations of fraud are serious and therefore should not be made lightly; and certainly not without evidence to support it.

[73] The authorities have established that allegations of fraud in civil proceedings must be proved on the balance of probabilities. I have garnered valuable guidance on how the court ought to approach and assess the issue of fraud from Brooks, JA (as he then was) in the case of **Sunshine Dorothy Thomas v Winsome Blossom Thompson** [2015] JMCA Civ 22, at para. [44] and [45] where he cited with approval several excerpts from the cases of **Associated Leisure Ltd and others v Associated Newspapers Ltd** [1970] 2 All ER 754 at pages 757-8 ('**Associated Leisure Limited**'); **Donovan Crawford and Others v Financial Institutions Services Ltd** [2005] UKPC 40 ('**Donovan Crawford and Others**') and **Harley Corporation Guarantee Investment Company Ltd v Estate Rudolph Daley and Others** [2010] JMCA Civ 46.

[74] **In Associated Leisure Limited** (*supra*), Lord Denning MR cautioned that fraud should not be pleaded unless there is "clear and sufficient evidence to support it". Similarly, in **Donovan Crawford and Others** (*supra*) the Privy Council

emphasised the standard in respect of the issue of fraud in civil litigation. It said at para. [13] of its judgment: "*It is well settled that actual fraud must be precisely alleged and strictly proved*".

[75] Suspicious circumstances and events, by themselves, do not prove fraud. The proof must be such as to create belief and not merely suspicion. The Claimant points to the closeness of the 2nd Defendant and the ex-wife of the deceased after his funeral and the fact that only her children benefited from the specific devises under the disputed will as being cause for suspicion.

[76] A crucial piece of evidence that is agreed between the parties is that the deceased made two *inter-vivos* transfers of properties belonging to himself to several of his children in March 1999. This was just about the time when his ex-wife, Grace, filed for divorce. The evidence from the Claimant and her brother Richard strongly points to a situation where Richard had informed his father about a conversation which he overheard between Grace and her daughters. It seemed that this resulted in the deceased executing *inter-vivos* transfers to his children who were not of his union with Grace Hare.

[77] I find it strange that after the divorce and certainly upon the return of his ex-wife, Grace, to the Norbrook home, the deceased did nothing further to 'protect' the other two properties or to ensure that they stayed in the 'family' as indicated by the Claimant. The only thing illustrated here is that the deceased took the opportunity to get his affairs in order before the divorce and transferred properties to his outside children and kept the remaining properties in his name alone.

[78] The Claimant has challenged the evidence of the 2nd Defendant that the deceased told him that he had made provisions for all his outside children. Exhibit 13 is the Birth Certificate of Andrea Margaret Hare, who was born on March 13, 1959. The evidence reveals that she was not a recipient of any of the transfers that the deceased made in 1999.

[79] I have examined the birth certificate of Andrea Margaret Hare. I note that lines 9 to 12 were added August 31, 2011, many years after the will was made. So, from this the possibility existed that in 2002 the deceased did not consider Andrea Hare to be his daughter or might not even have been aware of her existence. Certainly, based on Richard's evidence, the deceased had taken precautions to protect himself and the interests of his outside children. I find it strange that the deceased did not transfer any property to Andrea. I note that the Claimant did not produce any evidence to indicate that at the time the deceased would have made the will, he was aware of Andrea's existence and had accepted her as his daughter. The Defence did not seek to ascertain either whether the deceased knew of her existence at the time he made the will or accepted that she was his child.

[80] Based on the evidence of Exhibit 13, the Court cannot conclude that at the time when the deceased made the will, he knew of and had accepted that Andrea was his daughter.

[81] The Claimant relied heavily on the evidence of Miss East in asserting that the signature on the document purporting to be the Last Will and Testament of the deceased was not authentic. Miss East was vigorously cross-examined, and she gave very detailed evidence. The Claimant has relied on the expert's evidence to contradict the Defendants' assertion that the deceased signed the purported will. There was no direct evidence from the Claimant to contradict the Defendants' case and so great weight has been placed on the expert's evidence.

[82] I am inclined to point out that, given the circumstances of this case, it would be essential for this court to analyse the expert's evidence and decide whether it is to be accepted. In her evidence, Miss East spoke about the disconnection between the stem of the "K" and the branches. She found that the first "e" in the first name of the questioned signature was elongated and runs along the baseline, while in the known signature it was shorter and more acute. She found that the "H" in the known signature had a solid bar connecting the stems near the midpoint, while in the questioned signature, the bar starts much lower and has a broken stroke. Miss

East also looked at the “r” in the surname and found that it completes in a wide V shape, while in the questioned signature, the baseline of the “r” is even. She found that in the known signatures the “a” connects to the “r” at the bottom while in the questioned signature/document it connects at the top. She also found that the second “e” in the first name in the questioned signature was lower (smaller when compared to the ‘t”), while in the known signatures, it was very close or touches the “t” bar.

[83] Significantly, Miss East found that there were no similarities between the signature of the testator in the questioned document and those in the known signatures. She found that the entire document, including the signatures, was written by one person. At one point in her evidence, she said that the signature on the right was consistent with the rest of the document and then went on to say that the signature on the left (that of Monica Adams) was not an authentic signature. Of course, when I bear in mind that Mr. Brown admitted that he was the one who wrote the will and signed for himself; it meant that technically what Miss East was saying was that Mr. Brown forged not only the deceased’s signature but also Miss Adams’ signature. This was never pleaded by the Claimant.

[84] I want to point out that the law is that an expert is just another witness to assist the court and therefore Miss East’s evidence must be analysed like any other witness. I rely on **ASE Metals NV v Exclusive Holiday of Elegance Limited** [2013] JMCA Civ 37 (‘**ASE Metals**’). One of the issues in that case was the handwriting expert's evidence. Brooks JA (as he then was) declared at para. [53] “*There is authority for the Court conducting its own examination of documents in circumstances such as these and drawing conclusions therefrom”.* Brooks JA relied on **Re Sookram, deceased** TT 1982 HC 54 delivered July 22, 1982, and **Eileen Sumintra Bankay et al v Sukdai Sukhdeo** GY 1975 CA 24.I therefore, consistently with these authorities, and having heard Miss East’s evidence, I proceeded to examine the documents and analyse her evidence.

[85] I did not have a difficulty in finding that the known signatures were the signatures of the deceased. I found, as was obvious on the face of the document, and contrary to the evidence of Richard Hare, that there was no signature of the deceased on "K4". I note that K4 was the copy of the receipt to Karen Baker. There was no signature on that document.

[86] I looked at the disconnection in the "K" from the stem and the branches, as pointed out by Miss East. I have examined the "K" in the will, and I found that there was a small disconnection between the stem and the branch. It was not as wide as in the known documents, but it did not connect.

[87] Regarding the "e" in the questioned signature, I found that the first "e" was written in a similar fashion as in K1. K1 has two signatures of the testator. So, in the first signature on K1, I found that the first "e" was of a similar fashion as the questioned document. I also found that the "e" in the signature in K2 was like that in the questioned document. Miss East said that the second "e" in the first name in the questioned document was smaller and lower than the "t", while in the known documents, it was closer or touches the T bar. An examination of the known documents by the naked, untrained eye will reveal that on K1, there are two known signatures. In the first one, the "e" was lower than the "t", and in the second, it was very close to the "t". In K2, the "e" was very close to the "t" and almost touches it. In K3, the "e" was not close to the "t". So, I believe that it was fair to say that there was no consistency, in that regard, in all the known signatures. I also considered the questioned document where Miss East said the "e" was lower and smaller when compared to the "t", and a comparison with the known documents will reveal that there are similarities.

[88] The expert testified of the formation of the "H" having a solid bar connected near the midpoint, while in the questioned document, the bar starts much lower and has a broken stroke. When I looked at the "H" in K3, I found that it was written differently from the "H" in the other known documents. In K3, the "H" does not have a stroke extending downwards from the left outside the "H". The "H" in K1 and K2, are

different. The “H” in K1 has a short stem on the outside of the “H”, and the stem connects at the midpoint outside the left side. It is shorter than the stem in K2. In K2 there is a long stroke extending from near the top left outer part of the “H” going all the way down to the line but extending outward and curving upward at the end. In K1, the solid bar connects near the midpoint while in K2, the bar was higher on the right side of the “H” in both signatures.

[89] When I compare the “H” in the questioned document, I find that there was a similar stroke extending from about the outer midpoint of the “H” on the left side and it goes all the way down to the foot of the “H” and extends outward. That looks like the first “H” in K1. There was a broken stroke in the “H” in the questioned document.

[90] I note that Miss East stated that she was not looking at letter formation to make the determination in her analysis, but on close examination, I find that her evidence contradicts that very statement. Letter formation is a very important part of handwriting because most of her evidence concentrated on her analysis of how the deceased formed each letter in his signature. I agree with her findings in relation to “r” that in the known signatures it completes in a wide V shape, while in the questioned document the baseline in the “r” is even. I note too, that K2 did not even bear the signature of the deceased, yet it was used in the expert’s assessment.

[91] In totality, I do not agree with the findings and conclusions of the expert. I find that there are several similarities between the known signatures and the questioned signature in the purported will. I find that they are not so dissimilar that they could not have been written by the testator. I considered the period over which the various signatures in the known documents were written, that is, from 1984 to 2008, and the noted differences. I also considered the fact that, as the expert pointed out, over time signatures may vary. I noted too, that even in the known signatures there were differences. The known signatures were written in 1984, 1996, and 2008. So, after careful analysis of the handwriting expert’s evidence and

the documents, I find that, as in **ASE Metals** (*supra*), I am not persuaded by the expert's evidence.

[92] Miss East's analysis and findings have not inspired the Court with confidence that the signature was a forgery. Her evidence is not such as to convince me, on a balance of probabilities, that the questioned signature was not that of the deceased.

[93] I reject the report for the reasons mentioned above. I find that the Defendants, as the propounders of the will have the burden to provide evidence proving to the satisfaction of the court that the document was duly executed by the deceased. If they are unable to prove the will in solemn form, then the deceased's estate would fall on intestacy. The Defendants spoke of the circumstances surrounding the preparation and execution of the will. I will now proceed to analyse the evidence relative to their case.

[94] I note the Will on its face appears to have complied with all the formalities of section 6 of the Wills Act and both attesting witnesses, the 2nd Defendant and Mrs Adams Duhaney, gave similar evidence as to the circumstances under which the Will was signed by the testator. I find that neither attesting witness has anything to gain directly from the dispositions under the Will, as the deceased left his properties to his ex-wife and their children. The evidence before the Court is that the 2nd Defendant wrote the will, read it over to the deceased and the deceased approved its contents. Thereafter, the deceased made his signature in the presence of the 2nd Defendant and Mrs Adams-Duhaney. They then made their signatures in his presence and in the presence of each other. I note, however, that there are a few inconsistencies within their evidence, as highlighted by Counsel for the Claimant. This raises the issue of the credibility and reliability of these two witnesses and therefore their evidence requires further assessment.

[95] In considering credibility and reliability, I find that the court must consider "contemporaneous documents, probabilities, and possible motives". This is

especially important in cases involving alleged fraud. This duty imposed upon the court was made clear by The Privy Council in the case **Villeneuve and another v Gaillard and another** [2011] UKPC 1 at para. [67] where Lord Walker cited with approval a well-known passage by Robert Goff LJ in **Armagas Ltd v Mundogas SA (The Ocean Frost)** [1988] 1 Lloyd's Rep 1, 57, in which he stated, in part:

> *"…Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."*

[96] In assessing the credibility and reliability of the Defendants' evidence, I will now evaluate the internal inconsistencies. I have placed these inconsistencies in different headings for ease of reference as follows:

1. *The nature of the relationship Mr. Brown had with the deceased*

[97] Mr. Brown's written evidence was that he and the deceased had a "close business and personal relationship", and he engaged with the deceased frequently in his capacity as a banker. However, on cross-examination, Mr. Brown denied that he had a close business or a banking relationship with him. He said that they had been friends for over 30 years, and he sought to strenuously resist any notion that they had anything but a personal relationship. He also sought to make the distinction between a business relationship and a banking relationship with the deceased by stating that he was not the deceased's banker, though he would have given him advice on a few banking matters.

[98] I do not believe that Mr. Brown was being forthright and based on his responses to questions relative to the issue, I believe that Mr. Brown had a close personal as well as a business relationship with the deceased. I believe also that in their

relationship they would have discussed banking as well as other business interests, but he was not the deceased's banker.

[99] I do not find that this inconsistency was serious enough to destroy the witness' credibility.

2. Affidavits sworn to at 34 Arcadia Circle

[100] On cross-examination, Mr. Brown said that for over two years he had not left his home in Widcombe. However, at an earlier stage in these proceedings, he filed and relied on two affidavits, which on the face of the documents were sworn to at 34 Arcadia Circle on October 4, 2021, and on January 20, 2022. Mr. Brown's evidence is that he gave affidavits, but he does not recall if he had sworn to them before a Justice of the Peace. He was shown his two affidavits where they stated that they were sworn to, by him at 23 Arcadia Circle, but he insisted that they were sworn to at 34 Arcadia Circle. He recognised his signature on the affidavit of October 4, 2021, but he does not recall where he swore to that affidavit. He read where the affidavit was sworn at 34 Arcadia Circle on October 4, 2021. He insisted that he swore to the affidavits at 23 Arcadia Circle and not 34 Arcadia Circle. He disagreed with the suggestion that he was not a witness of truth.

[101] He could not recall the name of the Justice of the Peace, and he was allowed to refresh his memory. He then identified the Justice of the Peace as Carol Fay Stoner. He explained that Miss Stoner would have come to his home at 5D Widcombe Road, to sign the documents. He said that Miss Stoner lives at 34 Arcadia Circle, while 23 Arcadia Circle was his previous home. He could not remember the last time when he went to his previous home, but he knew it was years ago.

[102] I consider that a Jurat affirms the truth of the contents of the document, and the location where the document was signed. The document certainly contradicts the witness' evidence. However, I believe Mr. Brown that the documents were signed at his home and not at the home of the Justice of the Peace. I find support from

the evidence of Mrs. Adams-Duhaney who testified that Miss Carol Stoner would visit Mr. Brown's home and sign documents for him.

3. Discrepancies within Mrs. Monica Adams-Duhaney's evidence and between the witnesses

[103] In cross-examination, Mr Brown stated that after he wrote the will, he read it to the deceased and then called Mrs. Adams-Duhaney. This is contrary to his affidavit evidence where he said in the presence of Mrs. Adams-Duhaney, he read aloud the will to the deceased. In cross-examination, he also said that in the presence of Miss Adams-Duhaney, he read aloud the will to the deceased, handed it to him, whereupon the deceased also read it and then indicated that the contents of the will were precisely as he had directed him to write. In cross-examination, Mrs. Adams-Duhaney said that the deceased did not say anything after Mr. Brown read out the will.

[104] Mrs. Adams-Duhaney seemingly gave inconsistent evidence in respect to what took place when she went into the dining room where the will was allegedly executed by the deceased. Under cross-examination, she said that when she went into the living room the 2nd Defendant, nor the deceased, did not write anything. But when she was asked if she was the only person who wrote anything while she was in the living room, her response was, "*No. I was not the only person. I was the last person".*

[105] Mrs. Adams-Duhaney was re-examined on the question as to which of her statements was true in respect of whether the deceased and the 2nd Defendant wrote anything while she was in the living room. She replied that they both wrote their signatures on the document. The court enquired of her what she meant when she said they did not see the deceased write anything when she was in the room. She replied that she did not know that "by writing" the lawyer was talking about the signature.

[106] I do not believe the discrepancies in respect to whether the 2nd Defendant read the will aloud to the deceased before he called in Mrs. Adams-Duhaney or after she entered the room are sufficient to shake the credibility of these witnesses. A lot of time has passed, and they are the sort of minor inconsistencies that can be expected even from witnesses of truth. Furthermore, it is not crucial to the issue of the validity of the will. I find that this inconsistency does not erode the quality of their evidence surrounding the circumstances under which the will was executed. The important issue is whether the deceased had given those instructions for the preparation of the document, and thereafter read them, understood, accepted and approved of the contents of the will as his own. Mrs. Adams-Duhaney provided corroboration on that very important issue of its compliance with section 6 of the Wills Act. She supported the Defendant's evidence that the deceased read the contents of the will and showed his acceptance by signing it and asking them to attach their signatures in his presence, to which they complied.

[107] It is important to note that the 2nd Defendant admitted that he wrote the will at the request and according to the instructions of the deceased. Minor inconsistencies in the evidence of witnesses are to be expected, as the incidence of giving a uniform and exact testimony may point to a false witness. I find that the testimonies were the recollection of the witnesses as to what occurred at the time when the deceased gave instructions and took steps to execute his will. I consider also the ages of the witnesses, the fact that the incident occurred over 20 years ago and the fact that memory distorts matters over time and reduces the ability to accurately recollect and describe every detail of what occurred on that relevant date. It is expected that there will be differences in a person's ability to recall events, so I do not find that the discrepancies between the witnesses' evidence were fatal to their credibility.

[108] Regarding Mrs. Adams-Duhaney's uncertainty about what was meant by writing, I noted her confusion, and I do not believe that she deliberately attempted to mislead the court. She gave a reasonable response to what she understood to be writing, as against putting her signature on the document. The court takes note that she is

of all-age school education and had been a household helper for most of her life. The court appreciates that the usage of the words and their connotations in public and by a layperson might be different depending on the person's educational level, one's intellectual ability and counsel's robust cross-examination.

[109] I find that the credibility of a witness encompasses not only the concept of their honesty as to whether the evidence of the witnesses is to be believed, but also the reliability of the witness as to their ability to remember facts and events with accuracy. I also note that credible witnesses may make honest mistakes. On the overall assessment of the totality of their evidence, I find that the internal inconsistencies mentioned above by counsel for the Claimant were of minor significance. I find that they did not impose a significantly negative assessment on this court's overall view as to their credibility. I find that these minor differences did not diminish the credibility of the witnesses nor erode the Court's confidence in their evidence.

[110] It is trite law that a court can accept part of a witness' evidence and reject another part of the same witness' evidence as it sees fit and this does not have to be detrimental to the entirety of that witness' evidence. I find that these inconsistencies would not merit the rejection of the entire witnesses' evidence. I found that, for the most part, they were candid with their responses. I also considered Mr. Brown and Mrs. Adams-Duhaney's evidence and found that there was no evidence of presumed prejudice or possible motives with respect to the outcome of the case. One last issue that I find necessary to address is that the majority of the case in respect of forgery was against the 2nd Defendant. From the commencement of the proceedings, it was stated that the 1st Defendant would not be giving evidence because he did not play any part in the preparation or execution of the will. Mr. Sydney Deroux was brought into the picture because he was an executor. A careful reading of the pleadings and evidence in the case at Bar does not reveal any material pointing to the 1st Defendant committing any act of fraud or forgery. Apart from stating in the Particulars of Claim that he was acting on a document procured through fraud, there were no allegations that he acted

unlawfully to obtain the Grant of Probate or that he participated in the preparation and execution of the purported will. All the evidence and pleadings on the Claimant's case pointed to the 2nd Defendant carrying out the fraud. The Claimant did not produce any evidence to prove that the 1st Defendant knew that the will was a forgery, and therefore, the Defendants did not deem it necessary for the 1st Defendant to give *viva voce* evidence. The only liability that appeared to have been attached to the 1st Defendant was that he acted on the authority given to him as an executor through the purported last will and testament of the deceased.

[111] I considered the **Crawford and others v Financial Institutions Services Ltd** (*supra*) distinguishable from the case at bar. In that case, the Privy Council alluded to the fact that Mr. Don Crawford's failure, refusal, or neglect to give evidence was a strong indication that he had no satisfactory answer to the allegations made against him. However, in the case at bar, no allegations of impropriety or forgery were made against the 1st Defendant and because of this it was not necessary for him give evidence. I do not believe that his failure to do so had any negative effect on the Defendants' case.

CONCLUSION

[112] The Court therefore finds that on a balance of probabilities, the Claimant has not satisfied the burden of proof that the deceased did not sign the will and that it is a forgery. I find that it has not been proven that the Defendants acted dishonestly or fraudulently in procuring the signature on the Last Will and Testament of Kenute Valentine Hare dated 27 June 2002, and as such, the claim ought to fail. I find the Defendants' evidence to be both credible, reliable and preferable to that called by the Claimant.

[113] The testator, by law, is empowered to dispose of his property to whomever he deems fit. I do not believe, based on the evidence that was presented, that there was any fraud carried out against the testator's estate. I believe the testator, after

giving instructions to the 2nd Defendant to prepare his will, approved of its contents and thereafter duly executed the will in accordance with section 6 of the Wills Act.

ORDERS

[114] I therefore make the following orders:

1. Judgment for the Defendants.

2. The orders sought in the Amended Fixed Date Claim Form filed on June 2, 2022, are refused.

3. The interim injunctions which were granted in these proceedings are lifted with immediate effect.

4. Costs to the Defendants to be agreed or taxed.