

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. HCV 1431/2006

BETWEEN	MILLICENT DEHANEY JACKSON	CLAIMANT
AND	JOANNE PEARL POWELL (nee Jackson)	1 <sup>ST</sup> DEFENDANT
AND	HARRIS B. JACKSON	2 <sup>ND</sup> DEFENDANT
AND	PAULA ANGELA JACKSON	3 <sup>RD</sup> DEFENDANT
AND	JACQUELINE ELIZABETH JACKSON	4 <sup>TH</sup> DEFENDANT
AND	EDA PATRICIA DEMETRIUS (nee Jackson)	5 <sup>TH</sup> DEFENDANT
AND	JANET ANNE RITTER (nee Jackson)	6 <sup>TH</sup> DEFENDANT
AND	ISAAC HALL	7 <sup>TH</sup> DEFENDANT
AND	JEVAN JACKSON	8 <sup>TH</sup> DEFENDANT

Mr. Sheldon Codner for claimant instructed by Dorothy Lightbourne and Company.

Dr. Dianne Harrison and Mr. Joseph Jarrett for all defendants.

Coram: D. O. McIntosh, J

HEARD: 21<sup>st</sup> May, 2008

## REASONS FOR JUDGEMENT

The Claimant Millicent Jackson by way of Fixed Date Claim Form  
Claims:

1. To be tenant for life, devisee and beneficiary named in the true Last Will dated the 25<sup>th</sup> day of August 1998 and witnessed and signed on the 27<sup>th</sup> day of September, 1998 of Percival Emanuel Jackson late of No. 9 Elizabeth Avenue, Kingston 10 in the parish of Saint Andrew, who died on the 2<sup>nd</sup> day of October 2003, and to have the said Will established.
2. That the court shall pronounce against the validity of the pretended Will dated the 9<sup>th</sup> day of August 2003.
3. That the court shall pronounce in solemn form for the true Last Will of the deceased dated the 25<sup>th</sup> of August 1998 and witnessed and signed on the 27<sup>th</sup> day of September, 1998.
4. An order for cancellation of the Certificate of Title registered at Volume 1390 Folio 736 (formerly 1068 Folio 780) of the Registered Book of Titles in the names of JOANNE PEARL POWELL (nee Jackson), PAULA ANGELA JACKSON, JACQUELINE ELIZABETH JACKSON, EDA PATRICIA DEMETRIUS (nee Jackson) and JANET

ANNE RITTER (nee Jackson) on the ground that the registration was obtained fraudulently.

5. An order that the said Defendants deliver up possession of the said Duplicate Certificate of Title registered at Volume 1390 Folio 736 to the Registrar of Titles for cancellation.
6. AN INJUNCTION to restrain the defendants by themselves or by their servants and/or agents from mortgaging, selling, transferring or otherwise dealing with the lands registered at Volume 1390 Folio 736 of the Register Book of Titles being lands known as 14 Derrymore Road in the parish of Saint Andrew.
7. AN INJUNCTION restraining the Registrar of Titles by herself or by her servants and/or agents from selling, transferring or otherwise dealing with the lands registered at Volume 1390 Folio 736 of the Register Book of Titles being lands known as 14 Derrymore Road in the parish of St. Andrew.
8. Damages for the fraud of deceit.
9. Damages for trespass.
10. Such further and other relief as this Honourable Court deems just.
11. Costs.

She places her reliance firstly on what she says is a Will signed by her husband in her favour dated the 27<sup>th</sup> September, 1998. That document was witnessed by only one attesting witness and was never probated nor was there any application for letters of administration by her.

The Defendants on the other hand relies on a probated Will dated the 9<sup>th</sup> August, 2003 which post dates the earlier Will of the deceased.

The Claimant challenges this later Will and Probate of the deceased by claiming that the signature on the Will is not that of the deceased. She relied on the evidence of Mr. Carl Minge Major and his expert opinion as handwriting expert.

Mr. Major was cross-examined as to his opinion before this court. This court did not accept the opinion evidence of Mr. Major for the following reasons:

- (a) The actual signature which he examined was a photocopy of the signature on the Will. He admitted that photocopies are not the best medium for comparisons
- (b) He indicated that the photocopy signature was a facsimile of the deceased signature which is tantamount to admitting its similarity which it being a photocopy would account for.
- (c) He was never informed and therefore could not take into consideration the fact that between the 27<sup>th</sup> September, 1998 and 9<sup>th</sup> August 1983 the.

deceased had had two strokes which would have affected the normal writing and signature of the deceased.

Further there is no challenge to the evidence of the attesting witnesses to the Will of the 9<sup>th</sup> August, 2003. The integrity of these witnesses were never impugned.

The Claimant was not a credible witness unlike the Defendants' witness.

On a balance of probabilities, this Court dismisses the claim with costs to the Defendants to be taxed if not agreed.

*S. W. W. L.*  
*16/4/09*