



[2023] JMSC. Civ 34

THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016HCV00229

BETWEEN	PAUL DUNCANSON	CLAIMANT
AND	DERRICK SHARPE	1ST DEFENDANT
AND	MARVA SHARPE	2ND DEFENDANT

IN OPEN COURT

Mr Ruel Woolcock instructed by Ruel Woolcock & Co for the claimant.

Mrs Natalya Heywood Blake and Miss Toni Ann Forbes instructed by Heywood Blake for the defendant.

Heard: June 6, 7, 8, 9, and 10, 2022 and March 1, 2023.

Whether will a forgery – whether signature appearing on document purporting to be last will and testament that of deceased – expert evidence - evidence of individual allegedly present when purported will was executed.

PETTIGREW-COLLINS; J

BACKGROUND

[1] The claimant, Paul Duncanson Sr, is the son of Rosena Williams, deceased. She died on November 6, 2014. Mr. Duncanson is challenging the document purporting to be Rosena Williams' Last Will and Testament dated June 7, 2012, on the basis that the document was fraudulently created by the defendants, Derrick Sharpe and Marva Sharpe, acting by themselves or with the assistance of others. The

defendants were named in the Last Will and Testament (hereinafter also referred to as the Will) as the beneficiaries of all that parcel of land known as 13 Hallandale Drive, West Passagefort, Gregory Park P.O in the parish of St. Catherine, registered at Volume 1123 Folio 664 of the Register Book of Titles. This property was registered to Rosena Williams. A Grant of Probate was issued to Mr. Michael Simms, one of the two executors named in the Will, on September 30, 2015 and the defendants were subsequently registered as the proprietors of the property.

- [2] The claimant subsequently obtained a copy of the purported Will and in 2016 caused that document and the signature appearing thereon which was said to be that of the deceased to be examined by a forensic document examiner and compared with other known signatures of the deceased. Miss East concluded that there are too many disparities in the questioned signature of Rosena Williams appearing on the Will for it to be considered as an authentic signature.
- [3] Mr. Derrick Sharpe passed away before trial and Mrs. Shape was appointed as his personal representative. His witness statement was admitted in evidence as exhibit 2.

THE CLAIM

- [4] The claimant, by way of Claim Form filed January 22, 2016, initiated this claim in which he sought the following orders against the defendants:
- i. A Declaration that the purported signature of Rosena Williams, deceased, appearing in the document described as her Last Will and Testament dated June 7th 2012 (sic) is a forgery.
 - ii. A Declaration that the purported said Last Will and Testament of Rosena Williams, deceased was obtained by fraud.
 - iii. An Order that the Grant of Probate issued by this Honourable Court of the said purported Last Will and Testament of Rosena Williams be set aside.

- iv. The Registrar of Titles is hereby directed pursuant to section 158 of the Registration of Titles Act to expunge transmission number 1977548 endorsed on Certificate of Title registered at Volume 1123 Folio 664 of the Register Book of Titles by deleting all words and/or numbers and/or symbols commencing with the word "Transmission" and ending with the word "Probate" inclusive.
- v. The Registrar of Titles is hereby directed pursuant to section 158 of the Registration of Titles Act to expunge transfer number 1977549 endorsed on Certificate of Title registered at Volume 1123 Folio 664 of the Register Book of Titles by deleting all words and/or numbers and/or symbols commencing with the word "Transfer" and ending with this word and symbols "Deceased" inclusive.
- vi. Costs
- vii. Interest thereon for such rate and for such period as this Honourable Court deems just pursuant to the Law Reform (Miscellaneous Provisions) Act.
- viii. Such further and/or other relief as this Honourable Court deems just.

[5] The claimant particularised the fraud as follows:

- (a) forging the signature of the deceased testator on the said document.
- (b) Falsely describing in the said document that two witnesses were present at the time the deceased is alleged to have signed the said document, who also observed the deceased execute the said document knowing the said document was not in fact signed by the deceased.
- (c) Falsely describing in the said document that the deceased devised the said land to the defendants knowing that the deceased did not in fact devise the said land to the defendants.

THE DEFENCE

[6] The defendants denied the allegations of fraud. They denied that they were part of any fraudulent scheme or that they had any knowledge of any fraudulent scheme. They presented evidence which, if accepted, proves that the will was signed by Mrs. Rosena Williams and was executed in conformity with the provisions of section 6 of the Wills Act. They asserted that they had no knowledge that the property, the subject of Mrs. Williams devise to them, had been gifted to them until the time of the reading of the will. They admit that probate has been granted in the estate of the deceased and the property duly transferred to them.

ISSUES

[7] The central issue in this case is whether the document purporting to be the Last Will and Testament of Rosena Williams deceased and dated June 7, 2012 is a forgery. More pointedly, the claimant questions whether the signature appearing on that document is that of the deceased. The credibility of Mr. Michael Simms is of critical importance but that of Mrs. Peart and Mrs. Sharpe is also relevant. The reliability or otherwise of the evidence of the expert witness is also a decisive factor.

DECISION

[8] The court accepts the evidence of the witness, Mr. Michael Simms, who testified to seeing the deceased sign her Last Will and Testament in his presence and that of another witness. The court also finds that there are other surrounding circumstances which support the evidence that the signature on the Will was that of Mrs. Williams. This court is also satisfied to the required standard that the document purporting to be the Last Will and Testament of Mrs. Rosena Williams, that was read by Mr. Simms and which was subsequently admitted to probate, is in fact the Last Will and Testament of Mrs. Rosena Williams, deceased. For reasons which will be explained, the court therefore rejects the evidence of the

expert who testified that there are too many disparities in the questioned signature appearing on the document for it to be considered as an authentic signature.

SUBMISSIONS

[9] Closing submissions were filed by the claimant on July 1, 2022 and by the defendant on June 30, 2022. The court is grateful for those submissions. The court apologizes for the delay in delivering this judgment.

Claimant's submissions

[10] Mr. Ruel Woolcock in his skeleton submissions urged that since the defendants' registration as the owners of the said lands was derived from the devise in the document purporting to be the Last Will and Testament of the deceased, if it is established that the signature of the deceased in that document is not authentic, it would follow that there was fraud or dishonesty of some sort in respect of the eventual transfer of the title to the defendants.

[11] In his closing submissions, counsel contended that the following matters are in dispute; the degree of the defendants' assistance to the deceased between her injury and her death, the extent to which the deceased was financially capable of meeting her living expenses, the involvement of the claimant and/or his son with the deceased, and the authenticity of the Will.

[12] Counsel submitted that although it is difficult to determine what anyone will ultimately decide to do in making a testamentary disposition, there is, in the absence of credible evidence from the testator herself, some value to be gleaned from the deceased's life and associations leading up to her death, as to the likely direction she would take in making a gift especially of her most valuable asset.

[13] Counsel also submitted that section 161 of the Registration of Titles Act empowers the court to invalidate a registered proprietor's title in the case of fraud. He placed reliance on paragraphs 20 and 21 of **Pottinger v Raffone** [2007] UKPC 22. Further, he argued that if the claimant is successful in an action for recovery or

ejection as against the registered owner, then section 158 of the Registration of Titles Act empowers the court to provide real meaning to that victory by directing the Registrar of Titles to cancel the title or rectify the register as the circumstances may require.

[14] It was the further submission of Mr Woolcock regarding the meaning of fraud under the Registration of Titles Act, that it has long been established that it is actual fraud and not constructive fraud which must be established to invalidate the title of a registered proprietor. See **Assets Company Ltd v Mere Roiho** [1905] AC 176 and **Honiball and another v Alele** [1993] 43 WIR 314. He relied on the definition of fraud as set out by Lawrence-Beswick J at paragraph 46-47 of **Elain Arem v Vivienne Myrie** [2018] JMSC Civ. 49. Counsel observed that the burden of proving fraud is on the claimant and the standard of proof is on a preponderance of probabilities. Albeit, he argued, that fraud is a very serious allegation, and in a civil claim the degree of probability required to prove such allegation is still on a preponderance of probabilities but such preponderance will be a higher standard than in other civil causes of action such as negligence. Counsel referred the court to paragraph 48 of **Ervin McLeggan v Daphne Scarlett and the Registrar of Titles** [2017] JMSC Civ 115 and paragraph 40 of **Paul Griffith v Claude Griffith** [2017] JMSC Civ 136.

[15] Mr. Woolcock submitted that although the Registration of Titles Act does not define what fraud is, it seems obvious that forgery of a testator's signature on a Will and which results in the registration of the named beneficiaries therein on the certificate of title for land under the Registration of Titles Act, is one clear instance of actual fraud. Further, short of an actual admission from the defendants or the defendants' witnesses the only way of providing cogent evidence sufficient to prove the forgery is through the expert evidence of a forensic document examiner.

[16] He asked the court to prefer the evidence of Miss East to that of the defendants' witnesses who testified that the signature was that of the deceased. Counsel submitted further that even in the face of the expert evidence, the court may

examine the signature itself and come to its own conclusion. For this submission he relied on paragraph 68 of **Paul Griffith v Claude Griffith** where he said Thompson-James J referred to and relied on the decision in **Fuller v Strum** [2000] All ER 2392 as authority for the position that the court is free to, and is also entitled to form its own view having regard to, and balancing the other evidence.

- [17] Mr. Woolcock submitted that in much the same way, on a balance of probabilities, the evidence points clearly to the document purporting to be the Last Will and Testament of Rosena Williams as containing a forged signature. He argued that this is evident even to the untrained eye. Added to this, he stated, is the inescapable inference and high degree of probability that one or both of the defendants knew or ought to have known of this forgery prior to their interest being registered on the title. He submitted that given that the defendants had the most to gain in the estate, there could logically be no other individual(s) unconnected to either of them who could have, or would have perpetuated the forgery without them being aware of it.
- [18] In any event, he stated, given that the defendants derived their interest through a testamentary devise and cannot be considered bona fide transferors for value, unlike the innocent purchaser for value in **Ervin McLeggan**, the defence that the fraudulent circumstances resulting in the defendant's registration on the certificate of title were not known by them, could not avail the defendants.

Defendants submissions

- [19] Counsel on behalf of the defendants submitted that the Last Will and Testament of Rosena Williams dated June 7, 2012 is a valid document and that her signature was not forged. Further, that at the time of execution of the Will, it was prepared in accordance with the testatrix's instructions and at execution, the testatrix understood that she was executing her Will for which she had given instructions.
- [20] According to counsel, the expert report has not conclusively indicated that the writing on the Will where the testatrix should sign was forged but states that the

signature was not authentic as she would not write out her name but would place R. Williams. Counsel argued that this is not sufficient and the report, it was submitted, cannot be relied on.

[21] Counsel maintained that it has not been proved that the defendant acted dishonestly or fraudulently in procuring the signature on the Last Will and Testament of Rosena Williams dated June 7, 2012 and the claim ought to fail, as there was no legal basis for initiating it and that there is a total absence of credible facts to support it and based on the case law, the standard has not been attained.

[22] The defendants' attorney at law proffered that the claim constitutes contentious probate proceedings and is subject to the provisions of section 2 in Part 68 of the Civil Procedure Rules (2002), in that the claim seeks the revocation of a grant of probate and a decree pronouncing against the validity of a Will. The claim therefore requires that the executors and all beneficiaries be made parties to the claim, as required by Rule 68.56 of the rules, especially in view of an allegation of fraud affecting the administration of the estate. Counsel argued that the executors named in the challenged Will are not parties to the claim and neither are the named beneficiaries. Therefore, she submitted the claim is not properly before the court.

[23] Counsel further advanced that fraud must be specifically pleaded and it has to be done with particularity and there was no direct evidence that the defendants committed fraud. Counsel stated that it must be proved by the claimants that the defendants acted dishonestly or fraudulently in procuring the handwriting or signature of Mrs. Rosena Williams and the standard of proof is beyond a reasonable doubt. Further, that it has not been stated on the evidence, what acts the defendants committed that amounted to fraud. According to counsel, the claimant has not discharged the legal burden, the fraud has not been proven.

[24] Mrs. Heywood-Blake referred to the pronouncement of Luchoo JA at page 346 of **Paramount Betting Ltd v Brown** (1971) 12 JLR 342 where he stated that "*while the accusation of fraudulent conspiracy is a grave one, in a civil case the standard*

of proof necessary to sustain such an accusation is the civil standard of a preponderance of probability, the degree of probability required being commensurate with the occasion...” Further, counsel argued that Rowe J in **Chin v Watson Off Course Betting** 1974 JLR 1535 made it clear that to establish fraud in civil proceedings, fraudulent conduct must be distinctly proved and it is not allowable to leave it to be inferred from the facts.

- [25] She stated that the claimant has not established any nexus between the defendants and the construction of the Will that they acted dishonestly to procure the document. Further, that there is no evidence to support the pleadings and the pleadings have not specifically stated how the defendants would have perpetrated the fraud.
- [26] Further, Mrs. Heywood-Blake argued that there is no evidence before the court to show how the defendants would have known that the document purporting to be the deceased’s Last Will and Testament is not the deceased’s Last Will and Testament. Neither is there any evidence before the court to show in what way the defendants encouraged and or assisted with the alleged forgery of the deceased signature. Further that the defendants played no role in the application for the Grant of Probate which was applied for by the executors named in the Will.
- [27] Counsel highlighted that the main documents which are being disputed, the Last Will and Testament dated June 7, 2012 and the Grant of Probate issued by the Supreme Court of Judicature of Jamaica on the 30th of September 2015, have not been tendered into evidence. A certified copy of the Certificate of Title for the property registered at Volume 1123 Folio 664 of the Register Book of Titles has been tendered into evidence and it shows the defendants being new owners. Counsel therefore submitted that even if the court finds that the Will is forged there is no evidence to substantiate or prove that the fraud was committed by the defendants.

- [28] Further, that based on the evidence the claimant has placed before the court, the claimant has not discharged the legal burden for the court to find conclusive evidence on a balance of probabilities that there is fraud on the part of the defendants.
- [29] Additionally, counsel advanced that there is no evidence that there is any conduct by the defendants which amounts to fraud as personal dishonesty or moral turpitude to defeat their title and to entitle the claimant to seek the reliefs sought.

THE LAW

- [30] The crux of the allegations against the defendants is that they forged or caused a will purporting to be that of Mrs Rosena Williams, deceased, to be forged. The standard of proof in a civil case is on a preponderance of the probabilities. Where allegations of fraud are made, the standard of proof remains the civil standard, contrary to the submission of counsel for the defendants. However, as has been demonstrated repeatedly in decided cases, the more serious the allegations, the more cogent must be the evidence required to establish such allegations. Because of the gravity of allegations of fraud, the evidence required to prove fraud must be particularly cogent. See **Fuller v Strom** [2000] All ER 2392
- [31] In the case of **Beverley Lewis and Harriet Hartley v Cleveland Hartley** [2016] JMSC Civ. 34, G. Frazer J made the following observation regarding the need to specifically allege and strictly prove allegations of fraud, by putting forward clear and sufficient evidence:

Attorneys-at-law dealing with civil litigation have traditionally been admonished to treat the issue of alleging fraud very cautiously and carefully. Lord Selborne LC in John Wallingford v Mutual Society and the Official Liquidator (1880) 5 App Cases 685 at page 697 stated the general rule, He said:

“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the

words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.”

In Associated Leisure Ltd and others v Associated Newspapers Ltd, [1970] 2 All ER 754 at pages 757-8; Lord Denning MR (as he then was) cautioned that fraud should not be pleaded unless there was “clear and sufficient evidence to support it”. Similarly in Donovan Crawford and Others v Financial Institutions Services Ltd [2005] UKPC 40, the Privy Council emphasized the standard in respect of the issue of fraud in civil litigation. The Court adumbrated at paragraph 13 of its judgment that “It is well settled that actual fraud must be precisely alleged and strictly proved.”

- [32] In Halsbury Laws of England Volume 12 (2009) 5th Edition paragraphs 1109 – 1836 the standard of proof was explained as follows:

“...it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged: the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.”

- [33] Section 3 of the Forgery Act defines forgery as “the making of a false document, in order that it may be used as genuine. Further, subsection (2) of section 3 provides 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; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false-

(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein, or

(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or

(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it:

ANALYSIS

- [34] The starting position is the presumption that a will is properly executed and is valid. The court must from that starting point assess whether evidence which is sufficiently cogent has been presented in order to rebut that presumption.
- [35] In this particular instance, evidence has been presented regarding the precise circumstances of the making of the will. It has not been suggested that the circumstances as explained by Mr. Michael Simms resulted in a will which was not properly executed. Instead, the claimant is essentially asking the court to say that there was no such occurrence as explained by Mr. Simms.
- [36] There is also no question that if it is borne out to the requisite standard that the signature on the will is not that of Rosena Williams, then there was a forgery of her signature and a finding of forgery of her signature would be the clearest evidence of fraud, as Mr. Woolcock submitted. This would be sufficient evidence from which this court could draw the inescapable inference that one or both defendants knew or ought to have known of this forgery and in some way colluded in having the will prepared and/ or the signature purporting to be that of the deceased affixed. It would not be unreasonable to conclude that since the defendants were named as the main beneficiaries of the estate, there would logically be no other individual(s) who are unconnected to either of them who would have perpetuated the forgery without them being aware of it. On that basis, either or both defendants could be fixed with the fraudulent act.

How expert evidence is to be assessed

- [37] The court must consider the evidence of the expert and decide if that evidence is to be accepted. If the court accepts that evidence, it means that Mr. Simms could not be speaking the truth as to the circumstances of the execution of the will.

- [38] Expert evidence must be assessed in the context of the other evidence given in the case. That evidence should be tested against known facts. A judge is entitled to disagree with an expert if there is a clear basis on which that can be done. It is important that the court carefully assesses the quality of the reasoning of the expert. It means that the reasons given for the conclusion is to be carefully examined.
- [39] In this instance, the expert explained the analytical process by which she arrived at her conclusion. The court has to decide if the analytical process is logical or illogical, if it is contradictory or not, or if there is the underlying substratum of facts present to support the reasoning and conclusion.
- [40] The court must also take into consideration the nature of the science involved. In this case, we are not concerned with a matter of physical science where matters can be proved to a point of near certainty. Rather, the expert can say whether the characteristics of the handwriting in the questioned document are consistent or inconsistent with that in the documents used for comparison. Where, as has happened in the present case, it is determined that the handwriting (in this case signature) in the questioned document is inconsistent with that in the documents used for comparison, such evidence may serve to bolster the claim that the handwriting said to be that of the deceased, Mrs. Williams, on the questioned document, is not in fact her signature.
- [41] It is against the background of the considerations set out above, that this case must be examined. This court recognizes that unless there exists very cogent reasons for disagreeing with the evidence of an expert, a court should not lightly depart from findings made by that expert, especially in circumstances where there is no expert evidence contradicting that of the expert with whose findings the court disagrees. In the case of **Winston Bloomfield v Markis Sandra West (Executrix of the Estate of Altamont Delisser Bloomfield) and Thelma Agatha Wilson (Executrix of the Estate of Altamont Delisser Bloomfield)** [2019] JMSC Civ 23,

Bertram Linton J rejected the evidence of the expert on the basis that it was equivocal at best.

[42] In **Joan Matheson v Donovan Lennox and Marlene Lennox** [2016] JMSC Civ 188, the claimant, in her capacity as agent of the executor of Headley Henry Williams' Estate, challenged the authenticity of Mr. Williams' signature in an agreement for sale between Mr. Williams as vendor and the defendants as purchasers. She sued the defendants for damages for fraud and forgery of the vendor's signature. E Brown J (as he then was) preferred the defendants evidence over that of the expert witness and found that the signature was not forged. He considered that the expert's evidence was equivocal. The learned judge considered that the expert was unsure that it was the vendor's signature because it was written in script, he was not given adequate documents from which he could make a proper comparison of the signature. The expert agreed that regular handwriting can be different from a person's signature and the letters he compared were regular handwriting. The documents he used were photocopy documents. He also agreed that illness such as stroke can affect a person's handwriting.

[43] In the case of **Paul Griffith v Claude Griffith** [2017] JMSC 136, Thompson James J relied on the expert report and agreed with the findings and conclusions, as upon her own examination, she found that the signature on the will contained several differences from those of the known signatures. She came to her conclusion notwithstanding her finding that the sample size was small relative to the age of the deceased; that there were variations in the known signatures of the deceased, and that the deceased illness would cause variations in his signature. The learned judge held that the signature was not signed by the deceased and the will was therefore a forgery.

[44] I will set out the essential aspects of the evidence of Mr. Simms since it is his evidence which delineates the circumstances of the making of the will and which in essence is in conflict with the conclusion of the expert witness. I shall also

examine the evidence of the other witnesses relating to the deceased relationship with her son and grandson and with the defendants.

Evidence of Mr. Simms and Mrs. Peart regarding the circumstances of the making and safe keeping of the Will

- [45] Mr. Simms gave evidence that he knew Mrs. Williams for some time as they attended the same church and he would sometimes take her home from church. He stated that after Mrs. Williams became ill, he would visit her from time to time at her home and that in 2012, Mrs. Williams indicated to him that she wanted him to assist her with her Last Will and Testament. He said he advised her that she needed two executors and two witnesses. According to him, after some time had elapsed, Mrs. Williams called him and he went to see her. At that time, he said, Mrs. Williams gave him instructions to prepare a Will and she outlined to him what she wanted the contents to be. He stated that she told him that she wanted him to be one of her executors and he said he suggested that Mr. Howard Richardson, another good friend of hers be the other executor and Mrs. Williams agreed.
- [46] Mr. Simms recalled that he wrote a draft will and left it with Mrs. Williams and she did not like it, so she kept sending messages to him. When he eventually went back to see her, he said she told him that she wanted the Will to be done a particular way. He said he did two or three other drafts and each time according to him, Mrs. Williams' instruction was that the house must go to Tad and his wife as they had been assisting her for many years. He said Mrs. Williams gave him the names and addresses of Tad and his wife. It is not disputed that Mr. Sharpe was known as 'Tad'. Mr. Simms said he encouraged Mrs. Williams to give something to her son.
- [47] He said he did another draft of the Last Will and Testament and read it to Mrs. Williams. That draft she found to be acceptable. He said Mrs. Williams then told him to call Miss Taylor as she wanted her to be a witness. Mr. Simms said further, that on the same day June 7, 2012, Miss Taylor came over to Mrs. Williams' house.

His evidence was that in Miss Taylor's presence, Mrs. Williams indicated what she wanted and this was now to be written on the will form. The contents of the Will were read over to Mrs. Williams in Miss Taylor's presence, she read it also and then executed it before him and Miss Taylor. He stated that after Mrs. Williams signed, he signed and then Miss Taylor signed as witness. From a perusal of the document, it is evident that Mr. Simms signed as a witness.

[48] Further in his witness statement, Mr. Simms said the Will was placed in an envelope with Mrs. Williams' name on it and was left with her. He stated that at the time when Mrs. Williams executed the Will, she was physically weak but strong verbally and able to write. Mr. Simms claimed he never discussed the contents of the Will with anyone.

[49] In cross examination, Mr. Simms made it clear that he wrote the Will on behalf of Mrs. Williams and that no one else assisted him in writing it. He mentioned his handwriting not being the best and explained that sometimes when he writes, it may not be clear to certain persons as they may not understand certain letters. He disclosed that it took Mrs. Williams a little time to read the draft Will because of his handwriting. His evidence was that Mrs. Williams was right-handed.

[50] It was Mr. Simms' evidence that after Mrs. Williams died, Mrs. Hyacinth Peart who was responsible for making her funeral arrangements informed him that she was given a package by Mrs. Williams some time ago that contained her Will among other documents. He said a package was subsequently given to him by Mrs. Peart and among the documents found in the package was Mrs. Williams' Last Will and Testament. Mr. Simms said that he removed it from the same envelope that he had placed it in and it was in the same condition as he had given it to Mrs. Williams on the day that she had executed it.

[51] I divert for a moment to consider the evidence of Mrs. Peart regarding custody of the Will. Based on Mrs. Peart's evidence, she has no personal knowledge of the making of the Will by the deceased. She stated that she was overseas and when

she returned, Mrs. Williams gave her a black plastic bag which Mrs. Williams said contained her Will and told her to keep it safe. She was not aware of the contents of the Will.

[52] Mrs. Peart gave evidence that upon receiving the plastic bag, she placed it in a cupboard and it stayed there until Mrs. Williams died. She stated that she told Mr. Simms that she had a bag that contained Mrs. Williams' Will among other documents and she gave the bag to Mr. Simms after Mrs Williams' death. Mrs. Peart said that for the time that she had the bag, she never opened it to look at its contents.

[53] This evidence is important if it is accepted, in that while Mrs. Peart cannot give admissible evidence as to the contents of the plastic bag, what she says is that the bag was given to her by Mrs. Williams and it is that bag which she gave to Mr. Simms. This evidence supports the claimant's case that the document which Mr. Simms retrieved from Mrs. Peart came from Mrs. Williams.

[54] Mr. Simms stated that he attended Mrs. Williams' funeral and after the funeral he read the Will to Mr. and Mrs. Sharpe, Mr. Howard Richardson, Miss Hazel Taylor, Mr. Paul Duncanson Snr, Mr. Paul Duncanson Jnr and Miss Monique Duncanson. He stated that he explained to the persons present that whatever is in the Will represent the wishes of Mrs. Williams. He said that after the Will was read, both Mr. and Mrs. Sharpe appeared surprised as it was the first time that they were hearing that they were beneficiaries of Mrs. Williams' house.

[55] Of course, Mr. Simms' explanation as to why Mr. and Mrs. Sharpe appeared surprised is pure conjecture. According to Mr. Simms, this was also the first time that Mr. Howard Richardson was being made aware that he was one of the executors of the Will. Mr. Simms said he subsequently took Mrs. Williams' Last Will and Testament to a lawyer and asked him to apply for a grant of probate. Further, that the grant of probate was obtained on September 30, 2015 for the same Will.

The relationship of Mr. and Mrs. Sharpe with the deceased

- [56] Although not directly relevant to the question of whether or not the signature on the purported will is that of Mrs. Williams nor is the evidence in support of the circumstances surrounding the making of the Will, the evidence of Mr. and Mrs. Sharpe as well as that of Mrs. Peart and Mr. Simms regarding the deceased relationship with her son, grandson and grand - daughter is relevant. It is relevant in that it offers an explanation as to why the deceased would have excluded them from benefitting from her only significant asset.
- [57] Mrs. Sharpe' evidence was that to the best of her knowledge, Mrs. Williams and her son did not share a good relationship. According to Mrs. Sharpe, the claimant did not assist in the care of his mother whether emotionally, physically or financially. She stated that she saw him at the house when Mr. Williams died and also when Mrs. Williams died. Her evidence was that Mrs. Williams had a better relationship with the grandson but that the grandson did not pay much attention to Mrs. Williams after she became ill.
- [58] During cross examination, she said she knew this because Mrs. Williams told her. She stated that she did not know about Mrs. Williams' grandson assisting her with filling her prescription or sometimes taking her to the bank. She was, however, aware that he visited his grandmother sometimes, but unaware of him visiting her every week. She later stated that Mrs. Williams would tell her when her grandson visited but she did not tell her what the nature of those visits were. Regarding the claimant, when Mrs. Sharpe was asked if he visited Mrs. Williams sometimes, she said he only did so once in a while because they never 'agreed'. She was clear in cross examination that she had no personal knowledge regarding the visits by the claimant to Mrs. Williams but that her evidence was based on what Mrs. Williams told her.

The relationship of the claimant and his son with the deceased

- [59]** Mrs. Peart supported the evidence of Mrs. Sharpe regarding the nature of Mrs. Williams' relationship with her son and grandson and confirmed that Mrs Williams' relationship with her grandson was a little better than with her son. She said the grandson would visit occasionally and would assist Mrs. Williams to get medication, however, when Mrs Williams got really sick, she did not see him and Mrs. Williams was very upset about this. Mrs. Peart also stated that Mrs. Williams had a granddaughter who did not pay her much attention. This court recognizes the need to be quite cautious about Mrs. Shape and Mrs. Peart's evidence in relation to Mrs Williams' relationship with her son and grandson as much of their evidence was based on what they said they were told but it is relevant because it is indicative of Mrs. Williams' state of mind.
- [60]** The claimant did not seriously dispute the evidence that he did not maintain a close relationship with his mother. Neither did he effectively dispute that his visits to her were infrequent. He stated that he would visit her all the time when he had the time. He acknowledged that he did not visit her every week or even every month. In cross examination, the claimant stated that his mother lived less than half of a mile away from him. He also stated that he would speak to her whenever he had the time. He said that when he visited her, he did not take anything for her as she never normally wanted anything. According to him, she was an independent woman. He agreed that the defendants were good friends of his mother and that Mrs. Sharpe and his mother visited one another. He said he had no knowledge of whether Mrs. Sharpe shared meals with his mother.
- [61]** The evidence of the claimant and his son regarding Mrs. Williams' relationship with her grandson is in conflict with that of the defendants. The claimant was adamant that his mother and Mr. Duncanson Jnr. shared a close relationship. Mr. Duncanson Jnr. said he was not aware of his grandmother preparing a Will as she never mentioned it to him. According to him, it is entirely out of character for her to have done a Will and not mention it to him. Therefore he said, it was a shock to

him when Mr. Simms, the Justice of the Peace read what was purported to be his grandmother's last Will after she died.

[62] It was also the evidence of Mr Duncanson Jnr that he would visit his grandmother several times each and every week and he would stop by her house most work days and check in on her. He stated that many times, his grandmother asked him to carry out errands such as buying medication and groceries and he would do so. During cross examination, he stated that he has been a JUTC bus driver for 11 years and he works 5 days per week for 8 or 9 hours. He explained that his days off varied, so sometimes they were on week days and other times on the weekends. He said he spent about 45 minutes to an hour with his grandmother most times when he visited her. Also, that he would visit her two or three times out of the week when he did not have work or if his grandmother wanted him to run an errand for her. Further, that he provided financial assistance to his grandmother by paying for her medication which he did until she died. He also said he brought her to the bank to carry out her transactions. He said that after her death, he did the nine night and carried the coffin.

[63] The evidence of Mrs Peart is that as at 2010 when she started taking Mrs Williams to the bank, she became Mrs Williams' co-signatory and that at some point, Mrs Williams became weak and was then unable to go to the bank. This evidence is instructive in this although Mr Duncanson Jnr claims that he was so close with his grandmother so much so that she called him son, and he would visit her often up to the time of her death, Mrs Williams did not include him as a signatory to her account.

The assistance given to the deceased by Mr and Mrs Sharpe

[64] Mr Duncanson Jnr said that on the countless occasions he visited his grandmother, he has never heard her speak of the defendants as being helpful or kind to her, but he agreed in cross examination that Mr Sharpe who he also knew as Tad and

Ms Marva [Sharpe] were friends with his grandmother and that they lived close to her. Further, that sometimes when he visited his grandmother, he saw Ms Marva and he was aware that she would sometimes prepare meals and give to his grandmother. However, he did not know whether Mrs Sharpe prepared at least four meals per week for his grandmother. He highlighted that his grandmother paid the helper. He said that he did not know if his grandmother got help to pay the bills and he did not know how much she received for her pension but he knew that she collected her pension, widows pension and that her sister and niece sent her money from England regularly. He was not sure whether the defendants assisted his grandmother with groceries.

[65] Mr Duncanson Jnr stated that as his grandmother became older, she hired a helper who cooked her meals, cleaned her house, washed her clothes and generally assisted with the upkeep of her house. Therefore, he said, his grandmother was not reliant on anyone outside of her helper to assist with household chores. He highlighted that in 2010 his grandmother suffered serious injuries after she fell from her bed which resulted in her being confined to her house and so her doctors, Dr Robb and/or Dr Williams visited her at her house to treat her and prescribe medication. When asked in cross examination if his grandmother was confined to her house, his response was that he could not speak exactly, but that she was confined to her bed from she fell and damaged her foot. He said that it was roughly 6 or 7 years before she died that she had fallen.

[66] Mrs Peart said Mrs Williams always spoke about Mr and Mrs Sharpe and her relationship with them. She said she was friends with Mrs Williams since the 1970's.

[67] Mrs Sharpe gave evidence of her and her husband's longstanding relationship and years of assistance to Mrs Williams and her husband. Mr Sharpe said that they met in 1976. They spoke of doing chores to include purchasing market items and groceries, paying utility bills, and preparing four meals per week for them. They said the relationship continued after Mr Williams' death in 1999, and up to the time

of Mrs Williams' death. Mr Sharpe said that when Mrs Williams travelled overseas, Mrs Sharpe would entrust a cousin of hers with the task of preparing meals and ensuring that Mrs Williams' prescriptions were filled. Mrs Sharpe said that she would gift Mrs Williams with a package of foodstuffs received from her church once monthly. They said the assistance was borne out of genuine friendship. Mrs Sharpe said that Mrs Williams was bedridden for many years. Incidentally, Mr Duncanson senior seemed not to have been aware of that fact.

[68] Mr Woolcock made the observation that the extent of the assistance by Mr and Mrs Sharpe to Mr and Mrs Williams is in dispute. In cross examination, Mrs Sharpe acknowledged that Mrs. Williams had a live in helper. She stated that the helper assisted Mrs. Williams with meals sometimes and with household chores. She stated that she would provide Mrs. Williams with her dinner but on some Sunday mornings she gave her breakfast too. She said she even provided meals for the helper too. It was also her evidence that Mrs Williams did not want to eat from her helpers most of the time. Although the affidavit evidence was that they provided her with 4 meals daily, Mrs Sharpe stated in cross examination that she mostly visited on Saturdays and Sundays and sometimes on Tuesdays. She admitted that she didn't provide lunch and that she provided breakfast on Sundays only on some occasions.

[69] Mrs. Sharpe's evidence in cross examination was that although she did not visit Mrs. Williams everyday but they talked a lot over the telephone. She said she would visit twice weekly.

[70] Mrs Sharpe said in cross examination that her husband was a minibus driver who retired about 2013. She said further, that he operated from Kingston to Montego Bay and worked from Sunday to Sunday. She stated further that he left home between 4:30 am and 5:00 am and would return home between 4:30 pm to 5:00pm. She acknowledged that when he got home he would be exhausted. However, she asserted that her husband would assist Mrs Williams with little things around the house that men ought to do. She stated further that it didn't matter how tired Mr.

Sharpe was, if he was asked to do a favour, he would do it. She further explained that Mrs. Williams would ask Mr. Sharpe to pay bills. Additionally, she stated that her husband spoke to Mrs Williams as much as she did.

[71] In terms of finances, she agreed that Mrs Williams' would sometimes be assisted by her sister and niece who lived overseas. She also agreed that Mrs. Williams received widows pension and her pension. She stated that to her knowledge, Mrs Williams paid the helper. Mr Woolcock proffered therefore that since the deceased was financially independent, the Sharpe's evidence as to their degree of assistance to her should not be accepted.

[72] Some of the evidence ferreted in cross examination made it evident that the evidence contained in the witness statements of both Mr and Mrs Sharpe was somewhat exaggerated as it relates to the extent of their day to day assistance to Mrs Williams and in particular, the number of meals they provided. That does not for a moment whittle away my acceptance of the evidence that they were both of immense assistance to her.

[73] I do not therefore accept Mr Woolcock's submission that the impression created by the Sharpes in their witness statements that they were Mrs Williams' providers and caregivers is a farce. The fact that Mrs Williams had a live in helper does not negate the need for assistance of the kind the Sharpes said they provided. It is evident that Mr Duncanson Jr shared a better relationship with the deceased, but I also accept that in her later years that relationship had deteriorated and that he was not as helpful or may not have been helpful at all in those later years. While recognizing that Mrs Peart had no personal knowledge and relied and what she said Mrs Williams told her regarding the relationship with Mr Duncanson Jr, to the extent that Mr Duncanson Jr wishes this court to accept that he had a close relationship with his grandmother throughout and until the end of her life, I reject his evidence.

Evidence other than that of the expert regarding the deceased's signature/handwriting

- [74] It is of interest to note the evidence of Mr Duncanson Sr contained in his witness statement, that he became suspicious because the signature purporting to be that of his mother did not appear to be hers. Yet when asked in cross examination if he saw his mother sign any document, his response was "I haven't, because I'm not around her". He said he was familiar with her signature a long time ago from he was a child. In response to whether he could in recent times identify her handwriting he said "I used to know her handwriting." He agreed that he did not see any documents (presumably document signed by her) in recent times before he saw the Will.
- [75] During cross examination Mr Duncanson Jr said he saw his grandmother writing her name and signing her pension slip at home. When he was asked if he knew how his grandmother signs, he said, he could not say exactly, "it is not my jurisdiction". He said he obtained a copy of the Will from the defendant's lawyer in 2014-2015. Further that he did not get a copy of the original Will and he did not see the signature or the handwriting. It begs the question then as to the basis on which Mr Duncanson Sr could have formed the view that the signature was not that of his mother.
- [76] Mrs Peart's evidence was that when a copy of the Will was shown to her, she examined the writing of the name Rosena Williams and without hesitation, she said that it was Mrs. Williams' handwriting. Her evidence also, was that apart from the name Rosena Williams on the Will, she did not recognize anywhere else on the Will being in Mrs Williams' handwriting.
- [77] Her further evidence during cross examination was that when Mrs Williams was too weak to go to the bank, she accompanied her. Also, that she would see Mrs Williams sign when she took her to the bank as she would be beside her when she carried out her transactions at the teller. She said she only took Mrs Williams to

the bank when Mrs Williams needed money. Though clearly not by itself sufficient evidence in proof of the fact that the signature appearing on the disputed Will is that of Mrs Williams, that evidence tends to support the defendants' case. (See **R v Silverlock** [1894] 2 QB 766.)

Evidence of Miss Beverley East – expert witness

[78] The claimant relies primarily on the evidence of Miss Beverly East in asserting that the document purporting to be the Last Will and Testament of the deceased is not a genuine document. It is important that her evidence be looked at in some detail.

[79] Miss East gave evidence that she has been a forensic document examiner for over 33 years and is the president of Strokes & Slant which operates in three countries. She studied and trained in the United Kingdom and the United States of America and was qualified through Felix Klein in New York in 1993. She is a member of various international document examiners organisations. Miss East has also authored several articles relating to her area of practice and has given her opinion in several landmark cases. She has also lectured and trained others in her field. Over the years, Miss East has worked on a variety of handwriting identification cases which include verifying the authenticity of signatures in relation to wills and other documents.

[80] Miss East in her report stated that she received the Last Will and Testament of Mrs Rosena Williams dated 7th June 2012 which she labelled Q1 along with certain other known documents from the files of Mr Paul Everton Duncanson for examination and comparison purposes. She labelled those documents as indicated hereunder:

K1. Cancelled Jamaican Passport 091468 expired 1990

K2. Elector Registration ID card of Rosena Williams- issue date 1997

K3. Jamaica Constabulary Identification certificate of Rosena Williams dated 31st July 1992

K4. Life certificate of Rosena Williams

K5. JMMB client sales record cheque No. 088590 for the sum of \$100,000.00 dated 6 May 2004.

K6. JMMB client sales record cheque No. 377886 for the sum of \$5000.00 dated 22 October 2007

K7. JMMB client sales record cheque No.085064 for the sum of \$80,000.00 dated 20 Feb 2004

K8. JMMB client sales record cheque No. 296411 for the sum of \$15,000.00 dated March 2006

She also noted that 15 other known documents of Rosena Williams were given to her for examination purposes.

[81] Miss East considered whether Mrs Rosena Williams signed the Last Will and Testament of Rosena Williams dated 7th June 2012. She presented her findings as follows:

- I. The signature on **Q1** lacks speed and fluidity
- II. The spacing between the letters on the **Q1** signature are wider than those in the known signatures
- III. The letter formations are different from those in the known signatures; especially letters such as **W**, the skeletal double letter **I**, and the letter **s**
- IV. The letter **W** completes in a downward motion on the known signatures while the signature on **Q1** completes upwards
- V. There is evidence of patching in the surname in the letter **m**
- VI. The slant of the signature is vertical, while the known signature creates a right slant which is evident in all the known signatures
- VII. The connections between the letters are extremely different especially between the letters **s** and **e**
- VIII. The pen lifts on the question signature does not match those of the known signatures
- IX. Other discrepancies on the document are:

- i) The body of the **Q1** document has varying samples of writings which indicate that more than one person has written the document. The first two paragraphs are different in writing style than the last two paragraphs.
- ii) There is no notary stamp on the document where the Justice of the Peace Michael E. Simms has signed as witness.

[82] Miss East made the observation that handwriting is subconscious behaviour and that each individual creates a master pattern within their signature. She stated that while handwriting and signatures can vary from one to another there are usually major similarities within known signatures that can be identified between them. She concluded that there are too many disparities in the questioned signature of Rosena Williams for it to be considered as an authentic signature. Furthermore, she stated, Mrs Williams on **nearly** all the documents signs her name 'R. Williams' and not 'Rosena Williams'. The passport and the Elector Registration were included for examination, but in most instances she signs 'R. Williams' and not her full name 'Rosena Williams.'

[83] During cross examination, Miss East stated that the reference in her report to the Last Will and Testament is reference to the copy of the Last Will and Testament which she received and that she made no request for the original document. She highlighted that the electoral card, the passport and the JMMB documents which were referred to in the report were also copies of the documents and not the original documents.

[84] She accepted that a document that is copied can show differences as opposed to the original document if the photocopy is bad, as the image can be distorted. However, she disclosed that she scanned the documents received for the examination. She also informed the court that copy documents are accepted when originals are not available. She stated further that if she had obtained the original Will and examined it her opinion would be the same but pointed out that if she had

received the original Will she would have to examine all the known documents in the original form. According to Miss East the differences between an original and a copy is what colour ink may have been used and the indentation as to how heavily the person may have written but other than that all the features necessary for identification is clear enough to be seen.

- [85]** She further informed the court that there are four principles identified in an authentic signature, namely, movement, form, spacing, line quality, and these features are seen under magnification within the form of the signature. As to the meaning of her finding that the signature at Q1 lacks speed and fluidity, she highlighted that the authentic signature has certain features – speed and fluidity. She explained that, a signature lacks fluidity because it becomes slower, it lacks the speed that an authentic signature has. Similarly, she stated that a signature lacks speed because there are features in the signature that slows it down. She highlighted that to the untrained eye that is not so recognizable.
- [86]** In her evidence in cross examination, Miss East agreed that ill health can affect speed and fluidity but stated that in this instance, no tremor was identified and that comes under the banner of the line quality. She informed the court that the line quality would be so much lighter if the person is sick. Further that a signature does not take on new features if the person is sick. Her evidence was that when someone is sick it takes more effort to recreate a signature than to write what they already know. According to Miss East, a sick person would write what they are familiar with.
- [87]** She agreed that the signature of someone who is bedridden could be affected but cautioned that she would need to know what medicine they were taking because the medicine can affect the brain and handwriting is a brain signal. Further, she stated that any injury can affect handwriting. She stated that if someone were to develop an issue with the writing hand, there could be a difference in their handwriting. Her evidence before the court was that she eliminated certain characteristics. She said if Mrs Williams was having problems writing, there would

be certain characteristics, tremor writing, awkwardness in her writing and these were absent. She highlighted that the signature was strictly on the line and that's not the sign of an ailing signature. She pointed out that there is too much control given the way the signature was sitting on the line. Further, she opined that if Mrs. Williams had injury in the arm, there would be less control and that it makes no difference if it is the shoulders as the muscles are all connected in order to hold the pen.

- [88]** Miss East stated that in her experience, having examined numerous documents over the years involving people who have suffered strokes and other injuries, there are certain characteristics evident in those signatures. Miss East stated in the questioned signature the characteristics of illness, disability, being bedridden were not evident under magnification including tremor. She informed the court that that tremor is a significant characteristic and it was not evident at all. She reaffirmed her conclusion that there are too many inconsistencies in the questioned signature that cannot be found in the known signature of Mrs. Williams.
- [89]** Miss East's further evidence during cross examination, was that, although Mrs. Williams wrote her full name on the cancelled passport, the life certificate and the electoral card issued in 1997, which are important documents, and her first initial and last name on the sales record, when she was carrying out her assessment she first had to consider the time frame from the passport to the electoral card to the most recent documents which are the cheques, and consider which was closest in time to the Will.
- [90]** Her finding was that the time frame between the JMMB signatures are six years so she considered the closest signature to the time frame of the Will. She stated further that when she examined the name 'Williams', whether it was with the full names or the initials, there is a time frame of 1997 to 2006. She highlighted that there are consistent writing patterns within Williams, so she examined certain characteristics which are consistent with the surname but inconsistent with the questioned signature. She highlighted that the two most consistent features are

the movement which is indicative of how the signature form itself and where it stops. She pointed out that when you look at W in Williams it completes in a downward motion and the signature ends in a completion of a connected stroke. She stated that in the questioned signature, the W completes in an upward motion.

[91] Miss East continued to explain that in the questioned signature, the A and the M connections have been patched. She highlighted that it is hard to see without magnification. She also highlighted that when Mrs. Williams was writing the name Williams, (presumably in the known signatures), she developed a specific writing pattern evident in the movement of the W and the terminal strokes at the M and the S. These she said are not evident in the questioned signature.

[92] Miss East highlighted that there is a difference between a signature and handwriting. She described as a signature the writings made on the Will by Mrs. Williams. Her evidence was that she did not receive any other signature apart from that of Mrs Williams to compare with the questioned signature. When asked if one's signature can change over time, Miss East responded that it is individualistic. She explained that some persons' handwriting change and some persons even up to the age of 70 can write the same way. She agreed that a person's signature could change between 2007 and 2012. She noted that it is not a generalised answer. As regards the fifteen (15) documents, which were not listed, but to which she referred in her report, Miss East stated that some were not dated and some were not clear enough to be examined.

Assessment of Miss East's evidence

[93] One noteworthy feature of Ms East's evidence is that she examined copies of all the documents and not original documents. This was the case with the will as well as the documents used for comparison. Her assessment is that the differences between an original and a copy is just the colour ink used and the indentation, that is, how heavily the person may have written and that all the features necessary for identification is clear enough to be seen from a copy document but her evidence

is also that a document that is copied can show differences as opposed to the original document if the photocopy is bad, as the image can be distorted. There is really no evidence or suggestion that the copy documents produced to Ms East for examination were copies that were poor in quality. This court is mindful of her evidence that there were documents which were not examined by her because the quality of the copies received were not clear enough to be examined. This court is not able to say that because the documents examined were photocopies it is a significant factor, but it is a factor to be weighed in the balance when considering the accuracy and reliability of Miss East's findings, given her evidence that photocopied documents can show differences.

[94] One of the bases of Ms East's conclusion that the signature on the will is not that of Rosena Williams, is that on most documents, she signed R Williams, and not Rosena Williams. The signature on the will appears as Rosena Williams.

[95] It is not contested that Mrs Williams' signature appeared in the following documents as set out below:

(i)Cancelled Jamaican passport – date of issue not evident but said to have expired in 1990 signed Rosena Williams

(ii)JCF identification certificate dated July 31 1992 – signed R Williams

(iii)Elector registration identification card issued in 1997 – signed Rosena Williams

(iv)JMMB document dated February 20, 2004 signed R Williams

(v)JMMB document dated May 6, 2004 - signed R. Williams

(vi)JMMB document dated March 23, 2006 signed Rosena Williams

(vii)JMMB document dated October 22, 2007 signed R Williams

Another document listed as received for the purposes of comparison but not listed as containing the known signature of the deceased, was an agreement between Rosena Williams and Maddens Funeral Supplies, dated April 26, 2006 and signed Rosena Williams.

[96] Having regard to the information set out in the preceding paragraph, it is readily observed that Mrs Williams had two different ways of making her signature. Ms East said that she considered the signatures closest in time to the will. These signatures come from the JMMB documents. On one of those four documents, the signature appears as Rosena Williams and on the others as R Williams. It is clear that she had not changed her signature from one format to the other because in 2004 she signed R Williams, in 2006 she signed Rosena Williams and in 2007, she again signed R Williams.

[97] In circumstances where it is evident that she has signed in both formats and where it cannot be said that she changed from one format to another, then that is very clearly a faulty basis on which one could arrive at the conclusion that the signature on the will is not that of Rosena Williams, because on most documents, she signed R Williams, and not Rosena Williams.

[98] Ms East seemed reluctant to accept unreservedly that a person's handwriting may change overtime. When asked if one's signature can change over time, her response was that it is individualistic. She explained that some persons' handwriting change and some persons even up to the age of 70 can write the same way. That statement is clearly an acceptance that one's handwriting may change overtime. On the Will, Mrs Williams' signature is represented as Rosena Williams. That document is dated June 7, 2012.

[99] The clear basis for giving greater consideration to the signatures on documents closer in time to the preparation of the will would be a full recognition that signatures change over time. It is difficult to see how one can conclude that signatures change over time, yet insisting that the questioned signature is not that

of Mrs Williams when she had not examined any known document or documents signed by Mrs Williams shortly before June 7, 2012, the date the questioned will is said to have been executed. The evidence essentially is that there was consistency between the known signatures between 1997 and 2007, but it does not follow that there must also have been consistency between 2007 and June 2012.

[100] The evidence from both sides of this case is that Mrs Williams was ailing in her later years. Mrs Sharpe, Mr Duncanson Jr and Mrs Peart spoke of her being bedridden. Miss East highlighted that the questioned signature was strictly on the line and that that's not the sign of an ailing signature. It is important to note however, that because an individual is frail in body and legs it does not follow that that individual's signature must necessarily reflect that the person is ailing if the arms and hands are not directly impacted by the illness to the extent that that person cannot write on a straight line. Further, the conclusion that the signature lacked evidence of tremor does not to my mind necessarily lead to a finding that the signature was not made by someone who was ill. The same thing may be said if the brain is unaffected by the illness or is not to any significant degree affected. It also does not necessarily follow that the line quality of the signature would be much lighter if a person is sick; logically, as a practical matter, from everyday observation, whether greater effort is put into the act of writing, will be dependent on writing surface, positioning of the individual executing the writing, and a number of other factors.

[101] By agreeing that the signature of someone who is bedridden could be affected but that she would need to know what medicine that individual was taking is clearly an indication that she did not have all the information necessary to conclude that Mrs Williams' handwriting could not have changed to reflect the form of the handwriting as it now appears on the will. With the naked eye, although the signature on the Will does not appear identical to the other known signatures in the form Rosena Williams, the disparity in my view is not so great as to render it improbable that the signature on the will was made by Mrs Williams.

[102] There is no evidence that Ms East was made aware of what if any medications Mrs Williams was taking. Further, she stated that any injury can affect handwriting. She did not specifically say that it had to be illness directly affecting any particular limb or body part. It must clearly be inaccurate to in the slightest way infer that where illness is involved, it is only illnesses affecting the brain, shoulder and hand that may lead to change in handwriting or signature. Admittedly, the evidence coming from the defence regarding the state of Mrs Williams' hand was inconsistent. Mrs Peart's evidence was that there was no challenge to her hand only to her knees. When he was asked if there was anything wrong with her right hand, Mr Simms' response was, "remember she was an elderly person and would not be able to write like a person in physical condition." When asked whether she agreed that Mrs Williams had no challenges using her arms, Mrs Sharpe's response was that sometimes she did and later said Mrs. Williams had problems with her arms especially her shoulders. She added that Mrs Williams had bed sores. The clear scenario is that Mrs Williams was ailing.

[103] One of her findings is that the signature lacked speed and fluidity. That could hardly be unusual in an instance where someone is ill and from all indications at the time bedridden. Because of the failure to take into account the effects of illness, it is probable that the other matters raised from no.1 through 9 in her findings could be impacted by/ accounted for due to changes in an individual physical strength. We may never know with any degree of certainty whether that is so. The position from which one writes as well as the surface on which the writing/signing takes place could also impact the appearance of the signature. It is not evident that those factors were considered.

[104] Regarding the observation that in the questioned signature the A and the M connections have been patched, it is not difficult to understand why in ordinary everyday experience that could become necessary, depending on the surface that one uses when making a signature. I am mindful that no explanation was offered by Mr Simms as to why and how the signature appeared patched but the fact is

that he was never asked specifically. Neither did he give any evidence as to the nature of the surface on which the signature was made.

[105] There is no evidence that there has been any sign of tracing, or duplication by cut and paste. That of course is not to say that in the absence of those features, the signature is genuine.

[106] Miss East takes the view that the Will itself was written in handwritings of two or more different individuals. The body of the questioned document has varying samples of writings which indicate that more than one person wrote the document. She said that the first two paragraphs are different in writing style than the last two paragraphs. She has been quite vague on this matter. She has not pointed out from a scientific perspective the particular characteristics of the letters or words which propels her to such conclusion. Looking at the document itself, that observation is not readily discernible to me. Mr Woolcock's submission is that the difference is evident even to the untrained eye. He rightly observed that the first half of the document was prepared in script writing, whilst the second half is in cursive (joined up as he described it). That difference in writing style to my mind could completely accounts for the difference in appearance between the first two paragraphs of the will on the one hand and the next two paragraphs on the other hand.

[107] There is no question that there are differences between the questioned signature and the other signatures. What has not been highlighted is that there are also differences observed between the various signatures on the different documents used for comparison. At least, it appeared so in my eyes.

Other relevant considerations

[108] One other factor for this court to consider, is the evidence of Mrs Peart that Mrs. Williams was a very organised person who tried her best to put all her affairs in order. She highlighted that Mrs. Williams prepaid for her burial spot at Madden's Funeral Home and instructed that the balance on her Jamaica Money Market

Brokers account be used for her funeral expenses. To my mind, the individual who is methodical enough to make such arrangements, is unlikely not to have made arrangements for the disposal of her assets in the event of death. It was also Mrs Peart's evidence during cross examination that she spoke to Mrs Williams about the importance of a Will, but she said that Mrs. Williams did not speak to her regarding to whom she wanted to leave any assets she had.

[109] This is not a case where nothing at all was left for the deceased's son and grandson. The bequeath of a minimal benefit to each of them is more reflective of anger, or disappointment, or dislike or a combination of those emotions towards them; or it was the testator's way of demonstrating disapproval of some conduct on their part. I think it is significant that Mrs. Williams did not entrust her son or grandson with responsibility for any aspect of her funeral but left those arrangements to Mrs. Peart.

[110] It was the evidence of Mr Duncanson Sr that he is not aware of any other document purporting to be the Last Will and Testament of his mother apart from the document in which the defendants are referred to as the persons to whom the said land was gifted by his mother. He of course correctly asserts that if his mother did not sign the document purporting to be her Last Will and Testament, then she died intestate which would entitle him to apply to be administrator and ultimately the sole beneficiary of her estate. It would therefore be in Mr Duncanson's interest that the will be declared a forgery.

[111] Mr Woolcock thinks it is of great significance that Mr Simms said that he and Mr Sharpe used their own money to pay for the probate of the Will. Also suspect he says, is the evidence of Mr Simms that he had a partnership with Mr Sharpe to see to it that the wishes of Mrs Williams were fulfilled, that is, that the house was placed in the ownership of the defendants. Further, he found it suspicious as Mr Simms acknowledged, that this was his first time in his many instances of being an executor that he paid out of his pocket for the probate of a will. According to Mr Woolcock, such conduct belies Mr Simms' evidence that he and the Sharpes were

mere acquaintances. I draw no inferences contrary to Mr Simms' evidence in this regard, as there could be several reasons why such an arrangement could have been made, not all of which are consistent with Mr Simms having a close friendship with Mr and Mrs Sharpe. Further, I draw no adverse inference from the fact that Mr Simms made such payments.

[112] It was also Mr Simms' evidence that Mr Sharpe was the one who gave him the certificate of title. There is no evidence as to how Mr Sharpe came to be in possession of that document. Unfortunately, there was no opportunity, he died before the trial of this matter and it was his witness statement which was admitted in evidence. As adverted to before, Mr Williams seemed to have been a careful individual who planned her affairs. In the same way she saw it important to secure her will, she must have recognized the significance of securing the title to her only notable asset. The fact that Mr Sharpe had the document in his possession means that it was probably intended by Mrs Williams that it should come into his possession.

[113] The claimant is asking this court to say that there was collusion between Mr Simms and the Sharpes in causing a fraudulent will to be made and probated. It is the evidence of Mr Simms that he knew the defendants as they lived in the same neighbourhood and he would see them from time to time. He said they were mere acquaintances. In cross examination he explained that by mere acquaintances he meant that they were persons he saw from time to time and that he would call them his community friend. Although there was no direct evidence that Mr Sharpe and Mr Simms must have come to know each other and communicated quite well with each other, that fact may be inferred. That is not to say that they must have always been friends. I do accept the evidence that up to the time of the making of the will, the relationship was as Mr Simms explained it

[114] I wholeheartedly and unreservedly accept Mr Simms' evidence that he, and Mrs Williams were present and that Mrs Williams dictated to him what she wished the contents of her Last Will and Testament to be and that he prepared it accordingly.

Without any reservations whatsoever, I accept Mrs Peart as a witness of truth. In an instance where I accept the viva voce evidence of a witness whose evidence is in conflict with the findings of an expert, and where the expert is found not to have given sufficient consideration to certain important factors, I believe it is open to me to make a finding consistent with the evidence of the witness who is quite believable.

[115] Having regard to my findings and conclusion, the provisions of the Registration of Titles Act empowering the court to invalidate a registered proprietor's title are not applicable in the present circumstances. Further, it is also noted that Rule 68.56 of the Civil Procedure Rules has not been complied with but in the final analysis, nothing turns on that omission.

DISPOSITION

[116] Based on the analysis, this court concludes on a preponderance of the probabilities, that the document which was probated is indeed the Last Will and Testament of Rosena Williams deceased and consequently the orders sought in the Fixed Date Claim Form are refused. The costs of this claim are awarded to the defendants and are to be taxed if not sooner agreed.

.....
Andrea Pettigrew-Collins
Puisne Judge