



[2025] JMSC Civ 121

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
FAMILY DIVISION**

CLAIM NO. SU2023 ES 00341

IN THE ESTATE OF CARL
ROBINSON late of 46 Lockhart
Avenue, Kingston 20 in the parish of
Saint Andrew, Testate, (Probate)

AND

IN THE MATTER of Part 68 of the
Civil Procedure Rules, CPR

BETWEEN	VIVIAN GREEN	CLAIMANT
AND	DWIGHT ROBINSON	1st DEFENDANT
AND	CHRISTINE BARBARA DIXON	2nd DEFENDANT

Dates heard: 10th, 11th, 12th, 13th, 14th March, 2025 and 26th September, 2025.

OPEN COURT

Mrs. Emily Shields and Ms. Ernestine Sellars for the Claimant.

Mr. Matthew Royal instructed by Myers, Fletcher & Gordon, Attorneys-at-Law for the 1st
and 2nd Defendants.

**Wills – Probate – Competing Wills – Validity of will – forgery – Presumption of due
execution – Knowledge and approval – Testamentary capacity – Undue influence –
Fraud – Burden and standard of proof in fraud cases – Expert evidence –
handwriting analysis – Credibility of witnesses – Wills Act, s.6 – Forgery Act, s.3**

A. Martin Swaby (J) Ag

Introduction

- [1] Carl Robinson died on the 26th September 2020 after a prolonged illness. He was eighty-seven (87) years of age at the time of death. The Claimant played diverse roles in Carl Robinson's life. At first, he was his driver. However, as Carl Robinson's health deteriorated, he started managing his day to day affairs. In addition to this, the Claimant's name was placed on his bank accounts. This enabled him to collect Mr. Robinson's pension and pay his expenses. Following Carl Robinson's death, the Claimant also officiated his funeral in the capacity as a pastor.
- [2] The 1st Defendant and 2nd Defendants are blood relatives of Carl Robinson. The former is his nephew whereas the latter is his daughter. The Claimant has brought them before this court seeking to revoke a grant of probate which was issued to the 1st Defendant in relation to a Will dated the 21st of May 2019 "the 2019 Will". His claim is that this Will was forged and therefore invalid. He seeks orders for the pronouncement of the validity of another Will dated the 20th of April 2016 "the 2016 Will". His claim is that the latter is the true Last Will and Testament of Carl Robinson.
- [3] Whereas the Claimant receives gifts under both Wills, it must be noted that under the 2016 Will, he is named as sole executor and receives a 60% interest in Carl Robinson's dwelling home and a portion of the residue of the estate. Under the 2019 Will, he is not named as an executor and he only receives JMD \$300,000.00.
- [4] By way of Fixed Date Claim Form filed on the 10th of February 2023, the following orders are sought:-
1. An order that Probate obtained by the 1st Defendant as executor in Suit No. SU2021ES00754 in the estate of Carl Robinson, late of 46 Lockhart Avenue, Kingston 20 in the Parish of Saint Andrew be called in and revoked;
 2. An order that the 1st Defendant, a purported executor, under an alleged 2019 Will of the deceased, Carl Robinson, late of 46

Lockhart Avenue, Kingston 20 in the parish of Saint Andrew, be put to proof of the said will in solemn form;

3. A declaration that the grant obtained by the 1st Defendant as executor in Suit No. 2021ES00754 in common form was obtained by fraud;
4. A declaration from this Honourable Court on which is the true Last will and Testament of Carl Robinson;
5. Costs; and
6. Such further and other relief as this Honourable Court deems fit.

Background

- [5] The 1st and 2nd Defendants are named as executors and beneficiaries in the 2019 Will. In this Will, the 1st and 2nd Defendants, together with the testator's step daughter, are the only individuals who received an interest in Carl Robinson's dwelling home at 46 Lockhart Avenue.
- [6] The Claimant contends that this Will is forged and therefore invalid. He asserts that the contents of the 2019 Will was not consistent with the intention of Carl Robinson. His claim is that the wishes of the testator are reflected in the 2016 Will. He has put forward a copy of this as being the true Last Will and Testament of Carl Robinson. He asserts that the contents of that Will correspond with the promises made by Carl Robinson to him, that he would receive a significant interest in his dwelling home at 46 Lockhart Avenue.
- [7] In the Particulars of Claim, the Claimant asserts that the testator did not sign the 2019 Will. In support of his claim, he called Ms. Beverly East, a forensic document examiner, as also Ms. Yvonne Palmer, who is the daughter of the deceased. The Defendants gave evidence in this matter concerning the execution of the 2019 Will. They assert that it is not only a valid Will which was executed by the testator, but

that the Claimant was present on the premises during its execution. In support of their defence, Mr. Antwan Cotterell, an Attorney-at-Law as well as Mr. Khori Robinson, the surviving witness to the Will, were called. Mr. Cotterell's evidence is that he drafted this Will on the instructions of Carl Robinson and was present at the time of its execution. In evidence, Mr. Cotterell states that Vivian Green was on the premises at the material times when he received instructions for the preparation of the Will, as also at the time of execution. Mr. Green denies ever seeing Mr. Cotterell visiting the premises.

[8] Having assessed the evidence put forward in this case, I have found that the Claimant has failed to prove the case of fraud to the requisite standard. I have also found that the Defendants, the propounders of the 2019 Will, have proved on a balance of probabilities that the 2019 Will is a validly executed Will. Therefore, the orders sought in the Fixed Date Claim form filed on the 10th of February 2023 are refused.

[9] My reasons are summarized in this brief judgment, and I thank counsel appearing in this matter for their written submissions which assisted me greatly in making a determination in this matter.

THE CLAIMANT'S CASE

[10] The Claimant's evidence is that he shared a very close relationship with Carl Robinson. He states that from in and around the year 2018, Carl Robinson allowed him to sign documents on his behalf. Importantly, he was responsible for the day-to-day management of the affairs of the testator. He also hired nurses to care for Carl Robinson and paid the housekeeper.

[11] The 2nd Defendant visited the testator whenever the regular housekeeper Ms. Alverene Smellie was not present and whenever she so desired. The relationship between the testator and the 2nd Defendant was very antagonistic. Further, that

she was paid for her services and had signed for such payments. The Claimant asserts that his relationship with the 2nd Defendant was also strained.

- [12] As it concerns the 2016 Will in which he was named a beneficiary and an executor, he was not present when it was executed. He became aware of this document when Carl Robinson (the testator) handed him the original document sometime in the year 2016. Upon reading the Will he noted that he was to receive a 60% interest in Carl Robinson's dwelling home at 46 Lockhart Avenue. The Claimant kept this Will until early 2017, when he returned it to Carl Robinson.
- [13] Carl Robinson advised the 1st Defendant of the contents of the 2016 Will in his (the Claimant's) presence. The 1st Defendant was not happy with the disposition of the Lockhart Avenue premises. His understanding is that Carl Robinson also gave the 1st Defendant the original Will. His evidence is that sometime in the year 2019, Carl Robinson requested that the 1st Defendant return the original 2016 Will. However, the 1st Defendant did not return the Will to Carl Robinson. The latter then gave the Claimant a copy of the 2016 Will. His evidence is that after Carl Robinson's death on the 26th of September 2020, he made all the funeral arrangements.
- [14] He was unaware of the 2019 Will until he filed an application for summons to compel the 1st Defendant to bring in the original 2016 Will. After he did this, the 1st Defendant filed an Affidavit which disclosed that Carl Robinson executed a Will in the year 2019. The Claimant's case is that the Grant of Probate of the 2019 Will in solemn form in **Suit No. SU2021ES005754** was obtained by the 1st Defendant by fraud. The Claimant also contends that notwithstanding being served with the application to bring in the original 2016 Will, the Defendant went ahead and applied for probate of the 2019 Will.
- [15] His evidence is that the 2019 Will excludes him as a significant beneficiary of Carl Robinson's estate. He contends that the document purporting to be the 2019 Will does not bear the genuine signature of Carl Robinson, and that Carl Robinson did

not execute it. He further contends that, given the closeness of their relationship, had Carl Robinson in fact executed such a Will, he would have communicated this to him. In the alternative, he asserts that if the signature affixed to the document is that of Carl Robinson, it was procured by coercion or other under undue influence.

[16] The Claimant's case is that Carl Robinson and the 1st Defendant shared a strained relationship. At paragraph 43 of the Particulars of Claim filed on the 10th of February 2023, and reiterated at paragraph 53 of his first Affidavit filed on the 29th of February 2023, the Claimant avers as follows: *"The 1st Defendant, who is a nephew of the testator, barely had any relationship with the testator during the testator's lifetime. The 1st Defendant did not assist in the care of the testator."*

[17] However, In the Claimant's Affidavit, filed in Response to the Affidavit of the 1st Defendant and Mr. Khorl Robinson, filed on the 28th June 2024, at paragraphs 9 and 20 respectively, the following are stated:-

" [9] I recall that sometime around 2018 or thereabouts the 1st Defendant started making weekly monetary contributions for Carl. He'd give me approximately fifteen thousand dollars (\$15,000.00) weekly for Carl. Each time he gave me that money I would prepare a receipt in that amount and sign the receipt with my name..."

"[20] It is true that there are some medical expenses that were covered by the 1st Defendant. The known fact is that the 1st Defendant would be paid back out of the estate."

[18] In cross examination, he denied that he transported the deceased as part of his professional services. Counsel suggested that the Claimant was remunerated for all his services for the deceased. The Claimant maintained that he was not paid during the time leading up to the death of Mr. Carl Robinson, during the year 2020. In seeking to challenge this evidence, counsel directed the witness' attention to pages 15, 16 and 18 of exhibit **VWG1**. His attention was directed to documentation reflecting the name Pastor with sums of money reflected beside his name. Counsel

suggested that these are references or notations of payments received by him on account of services rendered to him in 2020. Mr. Green denied this. In re-examination: the witness explained that the payments reflected in the notebook to “Pastor” was for gas and not remuneration for him.

- [19] Counsel sought to challenge the Claimant’s evidence that the 2nd Defendant only visited Carl Robinson intermittently. In cross-examination, the Claimant was shown several pages of exhibit **VWG1**(a hardcover book maintained by him recording the monthly expenses of Carl Robinson). These entries reflected payments made to the 2nd Defendant between March and September 2020. The witness accepted that these payments represented sums given to the 2nd Defendant while she cared for her father. Counsel suggested that these entries contradicted his earlier testimony that the 2nd Defendant did not reside at the testator’s premises over an extended period. The witness rejected this suggestion and maintained that it was not true that the 2nd Defendant lived with Carl Robinson from 2013 to 2020.
- [20] I will state at this juncture that, in my view, exhibit **VWG1** demonstrates that the 2nd Defendant participated in the care of her father during the months of March to September 2020, as the entries show that she was consistently paid throughout that seven-month period. However, I cannot accept counsel’s submission that the exhibit supports the conclusion that she resided at Lockhart Avenue from 2013 to 2020.
- [21] Counsel suggested that when Ms. Smellie was absent, it was the 2nd Defendant who provided care for Carl Robinson and not the Claimant. In answer to this, the Claimant stated that he hired one Ms. Brown to care for Carl Robinson. The Claimant was also challenged regarding his statement at paragraph 53 of his Affidavit filed on the 29th of February 2024 (which is outlined in paragraph 16 supra). Counsel appearing for the 1st and 2nd Defendant, Mr. Royal, suggested that the 1st Defendant made significant monetary contributions towards Carl Robinson’s medical expenses.

- [22] In response, the Claimant insisted that he did not receive significant sums of money from the 1st Defendant for the care of Carl Robinson. However, when confronted with a notation in an exhibit attached to his own Affidavit which reflected *“For the month of September, Vivian Green received \$300,500 for weekly allowance and payment of nurses...”*, he accepted that he did in fact receive significant sums of money from the 1st Defendant for the care of Carl Robinson. He also accepted that the nurses which were employed were paid out of monies provided by the 1st Defendant. A question for this court is whether this operated to discredit the Claimant? This will be discussed further in this judgment.
- [23] The Claimant accepted that on his own evidence, he was not present when the 2016 Will was executed by Mr. Carl Robinson and he only became aware of it when Mr. Robinson gave him the copy.
- [24] The next witness for the Claimant was Ms. Yvonne Palmer. Her evidence is that a copy of the 2016 Will was sent to her by ordinary post in May 2016. She stated her belief that, had Carl Robinson executed another Will, he would have either mailed a copy to her or spoken to her about it. Ms. Palmer testified that the Claimant and Carl Robinson shared a very close relationship, and her account supports the Claimant’s assertion that he managed Carl Robinson’s affairs. She further stated that she found it difficult to believe that Carl Robinson executed a 2019 Will, as she spoke with him on several occasions after the alleged execution date and he made no mention of it. Her evidence is that prior to Carl Robinson’s illness she would speak with him approximately every three weeks, and as his illness progressed she increased her calls to about once every fortnight.
- [25] Ms. Beverly East was also called as a witness for the Claimant. By order of this Court, she was accepted as an expert for the purposes of these proceedings. Her report dated the 26th of June 2024 was permitted to stand as her evidence in chief. Ms. East received three documents which she classified as questioned documents. They consisted of the 2019 Will, a lost title application dated 22nd of May 2019 (one day after the 2019 will was executed) and the 2016 Will.

- [26] In summary, Ms. East's evidence is that the signature on the 2019 Will and on the lost title application dated the 22nd of May 2019, did not bear an authentic signature of Carl Robinson. She further opined that the signature on the 2016 Will is an authentic signature of Carl Robinson.
- [27] In arriving at this conclusion, Ms. East compared the above mentioned three documents against documents containing known signatures of Carl Robinson. The latter consisted of a driver's license dated the 9th of July 2008, a National Identification card for Carl Robinson and a black notebook owned by Carl Robinson containing several handwritings. Her evidence is that she examined all documents for comparison by using accepted scientific principles and techniques for document examination. In so doing, the known exemplars and additional documents were examined for habitual handwriting characteristics, these include, line quality, speed of writing, letter form, size, relationship, placement on line, spacing, range of variation, rhythm and skill level.
- [28] Her evidence is that she was able to identify habitual writing patterns in the known signatures of Carl Robinson. She outlined eight (8) habitual patterns. Having identified these patterns, she then outlined the similarities and differences between the known handwriting and the questioned documents. Ms. East went further and highlighted eight (8) inconsistencies between the 2019 Will and the lost title application, when compared to the known signatures and writing of Carl Robinson.
- [29] Mr. Royal conducted a very detailed and comprehensive cross examination of Ms. East. The main thrust of his cross examination was challenging the reliability of her evidence through the following: -
- a. Mr Royal suggested that Ms. East's testimony in this trial was at variance with evidence she has given in her capacity as an expert in a previous matter. He also confronted her directly with her previous testimony concerning the number of samples which are required to conduct a reliable examination. He suggested that in a previous trial she indicated that the number of samples required were

- twenty (20). In answer, she indicated that these were the old reference books. She indicated that she usually requests five (5) samples as that is the number that allows her to conduct a reliable examination. However, she has conducted successful cases with even one known sample.
- b. Counsel suggested that the known handwritings which were examined in this case were generated several years prior to the material time in which Carl Robinson is said to have executed the 2019 will. The suggestion was made that this weakened the reliability of her findings as handwriting changes over time. Ms East accepted that she did not receive any recent handwriting samples but indicated that this did not affect her ability. Nevertheless, she accepted that she usually asks for samples which are closer in time to the questioned document as handwriting may change over time. However, she noted that even if handwriting changes, she is able to use habitual handwriting patterns.
 - c. She was confronted with the fact that the examination did not account for the fact that Carl Robinson was ill and taking medication at the material time. She accepted that in a previous trial she did indicate that illness and the medication being taken may influence handwriting. However, in this matter, she did not inquire into these as she saw no signs of illness in her examination. She was careful to point out that she saw no tremors in the handwriting on the 2019 will.
 - d. Counsel suggested that the standards used in her examination were developed by a working group which had been disbanded. She stated that though the group was disbanded, the standards are still used and accepted.

THE DEFENDANTS' CASE

The First Defendant

- [30] Although the Claimant maintains that he does not know anything about this Will which was purportedly executed on the 21st of May 2019, the case for the 1st and 2nd Defendants is that the Claimant was in fact present on the premises when Counsel Mr. Antwan Cotterell visited for the purpose of the execution of the Will. Both Defendants gave evidence in support of their case. Additionally, Mr. Cotterell and Mr. Khorl Robinson were called as witnesses.
- [31] The 1st Defendant was cross examined extensively concerning the retainer of Myers Fletcher & Gordon to prepare the Will. The 1st Defendant's evidence is that Carl Robinson told him to get in touch with a law firm to do his Will. As such, he got in touch with Myers, Fletcher & Gordon, Attorneys at law, a firm which has represented him from as far back as the 2000's. When questioned, he stated that he does not remember if it was Carl Robinson who paid for retaining Myers, Fletcher & Gordon. However, he stated that he managed the business and affairs of Carl Robinson. He explained that he called Attorney-at-Law Mr. Christopher Kellman, and it was Mr. Cotterell who came. To his knowledge, Mr Cotterell came to the house more than once. He states he was present for the first meeting. He cannot remember the date of this meeting.
- [32] Present at the house at that time (the first meeting) was the 2nd Defendant, Ms. Smellie and the Claimant. His recollection is that it was the first time meeting Mr Cotterell. He states that he was at the premises for the duration of this meeting. Carl Robinson sent the Claimant outside making it clear that the meeting concerned "family business". Mr. Cotterell and Carl Robinson were seated next to each other at the dining table and the 1st Defendant went to the other side of the house some 12 - 15 feet away. As such, he was unable to hear what Carl Robinson and Mr. Cotterell discussed. The 2nd Defendant and Ms. Smellie were somewhere in the house.
- [33] He stated that Mr. Cotterell arrived at the house about mid-morning to midday. They (Carl Robinson and Mr. Cotterell) were there talking for a long time. He stated

that he cannot remember the second occasion when he was at the house when Mr. Cotterell was there, but he remembers seeing him more than one time. He remembers that on the second occasion that Mr. Cotterell called to him but he does not remember any other conversation. When instructions were given for the Will, he was on the premises, but he was not with the lawyer or Mr Robinson.

[34] Mr. Dwight Robinson was asked specifically whether Christine Dixon had discussed the 2016 Will with him. This was asked against the background that he (the 1st Defendant) indicated that Ms. Dixon and the Claimant would inform him concerning anything which related to Carl Robinson made a Will in 2016. He only became aware of a 2016 Will when he was summoned to attend court to produce this Will.

[35] The 1st Defendant indicated that he gave Carl Robinson a monthly allowance of \$60,000.00. Additionally, he paid rent for a tenant who occupied a room on the premises. This was approximately \$28,000.00 per month. He also paid for hospital services and sometimes these payments were made by the Claimant from monies he gave to him. He indicated that the Claimant's name was added to bank accounts as Carl Robinson had a urinary problem. He agreed that there was a decline in Carl Robinson's health and that two nurses were added. The Claimant sourced these persons and he (the 1st Defendant) paid them.

[36] It was the 1st Defendant's evidence that as far as he was aware, Carl Robinson had the mental capacity in May 2019. It was put to him that after Carl Robinson's death, the Claimant asked him about the 2016 Will. He disagreed and indicated that he knew nothing about any 2016 Will. He also denied telling the Claimant that Carl Robinson had left no Will.

The Second Defendant

[37] The 2nd Defendant was specifically asked what she remembers about May 2019. She narrated the sequence of events which unfolded on the 21st day of May 2019.

Her account is that Mr. Cotterell attended her father's home at approximately 10:00am. He arrived with a paper or an envelope in his hand and sat on the verandah with Carl Robinson. At the material time, she was situated in the washroom engaged in washing her father's clothes.

- [38] Subsequently, Mr. Khorl Robinson arrived on the premises and went into the living hall. When he arrived, Mr Cotterell and Carl Robinson were on the verandah. Mr. Khorl Robinson went to the living hall. There was a conversation with Mr. Cotterell and Carl Robinson. When Mr. Khorl Robinson came, he and Ms. Smellie were in the living room talking. She heard the Will being read to her father. Ms. Smellie and the Claimant were also present during the reading and signing of the Will.
- [39] A further aspect of the 2nd Defendant's evidence concerns discussions surrounding a 2016 Will. She indicated that Carl Robinson told her that the Claimant persuaded him to make a Will and that the latter had the Will. Additionally, that Carl Robinson told her that he demanded that the Claimant return the Will and the latter told him (Carl Robinson) that a Will cannot be changed. She indicated that she never discussed this with the 1st Defendant.

Mr. Khorl Robinson

- [40] Mr. Khorl Robinson gave evidence that Carl Robinson was his grand uncle and the 1st Defendant is his father. His evidence is that his grand uncle called him to witness a will. He attended his grand uncle's home in about May 2019 to honour this request. Although he remembers that his grand uncle called him during the month of May, he could not recall the exact date. On his arrival, he observed that his grand uncle, Mr. Cotterell and Miss Smellie were also present. This was the first time he was meeting Mr. Cotterell.
- [41] He sat at the dining table, and they asked him to be a witness to the Will. He does not remember how long it took. He sat at the table with Ms. Smellie and Mr. Cotterell. At the meeting, Mr Cotterell read the Will. The meeting started when he

got there. When he arrived, he did not have a conversation with his grand uncle. He knew that his grand uncle was sick, but he was not aware of the nature of the illness.

- [42] Mrs. Shields specifically challenged assertions made in Mr. Khorl Robinson's Affidavit. She confronted him with the use of the words "non compos mentis" in this document. In answer, he stated that he does not remember what "non compos mentis" means. He saw Carl Robinson put his signature on the document. Mr. Robinson's evidence is that Carl Robinson was physically frail and wrote in a shaky manner. He states that Mr. Cotterell was around the table and not on the verandah. He states that when he got to the house, he went into the living room; and that after Carl Robinson signed, he and the helper signed. He does not remember if he signed before Ms. Smellie.

Mr. Antwan Cotterell

- [43] Mr. Cotterell's evidence is that he had taken the instructions from Carl Robinson, drafted the 2019 Will and was present at the time of its execution. He was cross examined extensively concerning the process by which Carl Robinson became a client of the law firm. Questions were also asked about his years of experience at the bar at the time of the execution of the 2019 Will. He stated that he started working at Myers, Fletcher & Gordon in July 2018 and he was called to the bar in December 2018. Therefore, at the time of the execution of the Will in May 2019, he was five months at the bar. He was an Associate and Mr. Carl Robinson was a client of the law firm. That he was assigned to take instructions and to draft the Will on behalf of the client. He spoke to the partner responsible for this client as also the paralegal. He did not speak to anyone else about this client. He first saw the client at his home at 46 Lockhart Avenue which is in Patrick City.
- [44] When he saw Carl Robinson, he believed he looked at his identification card on the first encounter as this is required for KYC "Know Your Client/ Customer

purposes. He also looked at his identification card when he returned to the house to sign the Will. However, he did not take a picture of the identification card or write down the identification number. He also did not ask him for his date of birth. When he went to the home on the first occasion, both Defendants, as well as the Claimant were there. On this occasion, the 2nd Defendant introduced herself. He did not know any of the parties prior to that date.

[45] When he went on the first occasion, the 2nd Defendant let him in, and he saw the Claimant on the veranda, he greeted him, but he did not respond. Carl Robinson was assisted to the verandah and he introduced himself. He sat beside him and asked him what he wanted to put in his Will. He agreed that Carl Robinson was a man of advanced years. Whilst on the verandah, Carl Robinson requested that the Claimant go elsewhere, so that they could speak privately. He stated that he believes that both Defendants were present on the verandah within ear shot of he and Carl Robinson.

[46] He returned to the premises on the 21st of May 2019. On this occasion, he was again let in by the 2nd Defendant. He went into the living room. Carl Robinson was in the living room at the dining table. He (Mr. Cotterell) went to the table with the Will in a folder. The Will was printed and he had two copies. Both Defendants, Mr. Khorl Robinson and the helper whose name he believes to be Alvarene was present and in ear shot. He highlighted that the Claimant was initially present, but like the first occasion, he was asked to leave. Subsequent to the Claimant leaving, the Will was read over to Carl Robinson and signed by Mr. Khorl Robinson and the helper.

The Issues

- i. Whether the 2019 Will complies with the formalities under the Wills Act and if so, whether the presumption of due execution is applicable in the court's determination of the issue of its validity?

- ii. Whether the Claimant has established suspicious circumstances surrounding the due execution of the 2019 Will, if so, whether the Defendants have established that the testator knew and approved of the contents of the will?
- iii. Whether the Claimant have proved fraud and or undue influence to the requisite standard?

THE LAW & ANALYSIS

Whether the 2019 will complies with the formalities under the Wills Act and if so, whether the presumption of due execution is applicable in the court's determination of the issue of its validity?

[47] In coming to a determination, I must be satisfied firstly that the 2019 Will complies with the formalities of section 6 of the Wills Act. I bear in mind that the Claimant's case is not based on a failure to comply with the formal requirements of section 6 of the Act. Nevertheless, it is important for the Court to assess the Will as against such requirements and pronounce on its findings on that issue.

[48] Section 6 of the Act states that the Will must be in writing and signed at the end or foot by the testator. Further, that such signature must be made or acknowledged by the testator in the presence of two witnesses present at the same time, and that such witnesses must attest and subscribe the Will in the presence of the testator.

[49] I have examined the 2019 Will, and find that on its face, it accords with the formalities which are prescribed by section 6 of the Wills Act. The general principle is that compliance with the formalities result in a presumption that the Will was duly executed.

[50] In this case, the parties are at odds with respect to the applicability of the presumption to the 2019 Will. The Claimant argues that a presumption of due execution does not arise in this case, because the Defendants have led evidence

from the attesting witness as to the execution of the Will. The Defendants have argued that the presumption is applicable and ought to be applied.

[51] On this issue, Counsel for the Defendants, Mr. Royal, proffered the authorities of **Wright v Rogers** (1869) 1 L.R. 1P. & D. 678, and **Otuka and Others v Alozie and Others** [2006] EWHC 3493 (Ch) and I have found them to be useful in answering the question. The principle garnered from these authorities is that where a Will, on the face of it, purports to be signed by the testator in the presence of two witnesses and has an attestation clause which is signed by the witnesses, a presumption of due execution arises. The question however is the applicability and value of the presumption where viva voce evidence is presented concerning the execution of the Will, or in circumstances where the evidence discloses suspicious circumstances surrounding its execution or otherwise.

[52] In **Wright v Rogers**, the evidence revealed that the Will was prepared and executed in the presence of a senior Attorney-at-Law who had died prior to the proceedings regarding a challenge to the validity of the Will. Lord Penzance, in delivering the judgment, stated as follows;

“...The question for my decision is, whether this will has been duly executed. It is proved that the will was signed by the testator in the presence of two witnesses, an attorney and his clerk, that the attorney was a gentleman of long experience, and that the will had a perfect attestation clause, which was signed by the witnesses. Prima Facie, therefore, there cannot possibly be a stronger case in which the Court might presume that the will was duly executed...”

[53] Lord Penzance held that a Will which is regular on its face and contains a perfect attestation clause gives rise to a strong presumption of due execution. That presumption will only be displaced by the strongest and most cogent evidence. In **Wright v Rogers**, although the attorney’s clerk gave evidence that the Will had not been signed in the presence of the witnesses, Lord Penzance found that

independent evidence corroborated its due execution. In those circumstances, the presumption prevailed, and the will was upheld.

[54] In the case of **Otuka and Others**, the testator died on the 17th of February 2002. Probate was granted in respect of a Will which was executed on the 10th of February 2002, seven (7) days prior to death. A challenge was mounted against the validity of the Will firstly on the grounds that it was not signed by the testator and was therefore forged. This allegation was abandoned after a report was received from an expert. The Claimants then alleged lack of testamentary capacity and further that the witnesses to the Will did not attend the Testator's premises at the time when the Will is alleged to have been signed.

[55] David Donaldson QC in delivering the judgment acknowledged the presumption of due execution. However, since the attesting witnesses testified in respect of the execution of the Will, he stated that his decision was not based on this presumption but on the credit worthiness of the witnesses for and against the due execution of the Will. He stated as follows;

“[43]...where, as here, the will on its face appears to be duly executed there is a presumption in favour of due execution. And that presumption increases in force where (as in the present case) the will contains a clause known as a “perfect attestation clause” - stating that the signature has been appended in the presence of the subscribing witnesses. As it was put by Lord Penzance in Wright v Rogers (1869) LR 1 P & D 678 at 682, 33 JP 711, 38 LJP & M 67:

“The Court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail in the proving of Wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof.”

[44] It will be clear from what I have already said that the high standard for rebuttal of the presumption has not been satisfied by the Claimants. But in the present case it is in my view unnecessary to have recourse to the presumption, since I have heard and accept as accurate in its essentials positive evidence in support from three witnesses, including the two attesting witnesses.

[56] In considering the above, and in applying the principles, in the case at bar I have heard the evidence of Mr. Khorri Robinson, the surviving witness and Mr. Cotterell as it concerns the execution of the 2019 Will. I have also heard the evidence of the Claimant that this Will was never executed by Carl Robinson, and if it was executed by him, it was through undue influence. Additionally, I have heard the evidence of the Defendants that they were present on the premises when Mr. Cotterell visited the premises.

[57] Consequently, I find that although I acknowledge the presumption which arises where the Will, on its face, accords with the formal requirements, it is unnecessary to rely on the presumption in arriving at a decision in this matter. The Defendants, the propounders of this 2019 Will must establish knowledge and approval of the testator. Therefore, the onus rests on them to establish that this is the Last Will and Testament of Mr. Carl Robinson. I am guided by the position articulated by Parke B in **Barry v Butlin** (1837) 1 Curt 614, where he stated as follows:-

'The rules of law according to which cases of this nature are to be decided, do not admit of any dispute, so far as they are necessary to the determination of the present Appeal: and they have been acquiesced in on both sides. These rules are two; the first that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable Testator.

The second is, that if a party writes or prepares a will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and

jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased.'

[58] In [640] of the judgment, Parke P explained that the term 'onus probandi' means that the Court must be satisfied, to the requisite standard on a balance of probabilities, that the 2019 Will reflects the true intentions of the testator. Parke B noted that the onus probandi is generally proved by establishing capacity and the fact of execution. Through establishing this, knowledge of and assent to the contents of the will are assumed.

[59] This being said, the approach taken in the case at bar is that the Defendants must establish that the 2019 Will reflects the true intentions of Carl Robinson, through leading evidence that he was aware of its contents and executed the document.

Whether the Claimant has established suspicious circumstances surrounding the due execution of the 2019 Will, If so, whether the Defendants have established that the testator knew and approved of the contents of the will?

[60] A feature of this case is the Claimant's assertion that there are suspicious circumstances surrounding the due execution of this Will and the application for a grant of probate of the 2019 Will shortly after the 1st Defendant was served with a summons to produce the 2016 Will.

[61] In this case, the Claimant's claim is that to his knowledge, Carl Robinson was not a client at the firm Myers Fletcher and Gordon. Further, it was the 1st Defendant, who was a client at this firm and had engaged them. The 1st Defendant indicated that he was a client of Myers, Fletcher & Gordon, and he contacted a senior attorney at that firm and Mr. Cotterell was sent. He also stated that he may have paid for their services in the preparation of the Will.

- [62] The evidence is that under the 2019 Will, the 1st Defendant is a primary beneficiary of the estate of Carl Robinson. The Claimant also alleges that the 1st Defendant was aware of the 2016 Will and refused to return this document to Carl Robinson. This is denied by the 1st Defendant. The Claimant also alleges that the 1st Defendant was unhappy with the contents of the 2016 Will; and that shortly after being served with a summons to produce the original 2016 Will, an application was made for a grant of probate of the 2019 will.
- [63] Having assessed these assertions and others which were raised by counsel in the Claimant's written submissions, I find that I must approach the 2019 Will with utmost care and scrutiny to ensure that it is established to the requisite standard that it was duly executed by the testator and reflects his true intentions.
- [64] I have considered and applied the reasoning of the Supreme Court of Canada in **Vout v Hay** [1995] 2 S.C.R 876 in determining the approach to be taken where there is evidence of suspicious circumstances. Some parallels could also be drawn between the evidence in **Vout v Hay** and the case at bar and it is important to highlight them briefly in this judgment.
- [65] In **Vout**, the testator, who was eighty-one (81) years of age at time of death, left a Will in which the Respondent a Ms. Vout was named as executor and primary beneficiary. Ms. Vout was a friend of the testator during the years leading to his death. She was twenty-eight (28) years of age. The evidence disclosed that she engaged the services of her parents' Attorney-at-Law to prepare the Will and accompanied the testator to the law firm for the purposes of the execution of the Will. The legal secretary also gave evidence that Ms. Vout had called and given instructions for the Will to be prepared and was present during execution. Ms. Vout, in evidence, denied that she had called and given any instructions and indicated that she was not present when the Will was executed. There were also several inconsistencies between the statement given by Ms. Vout and her testimony during the trial.

- [66] However, Sopinka J highlighted that the Court considered evidence regarding the character of the testator and scrutinized the evidence of the paralegal as to what transpired during the execution of the Will and found in favour of the validity of the disputed Will.
- [67] The parallels I have extracted are the similarities in respect of the fact that in the case at bar, it was the 1st Defendant who engaged the firm of Myers, Fletcher & Gordon to prepare the Will, he having been a client of theirs it seems for years. Another similarity is the fact that the 1st and 2nd Defendants in the case at bar are both executors and primary beneficiaries and were present at time of execution.
- [68] These circumstances, against the background of assertions being made by the Claimant that the 1st Defendant was unhappy with the terms of a 2016 Will which was prepared by Carl Robinson, as also assertions being made by the 2nd Defendant that Carl Robinson was being forced by the Claimant to make a Will, is sufficient to cause the Court to approach the 2019 Will with careful scrutiny or to use the term used in the authorities “*to excite the suspicion of the Court*”.
- [69] For this reason, I have considered the guidance offered by Sopinka J in **Vout v Hay** in respect of how to approach the issue of suspicious circumstances. He indicated that any discussions regarding suspicious circumstances must begin with a consideration of the starting point of the words of Parke B in **Barry v Butlin** as outlined in paragraph 57 supra.
- [70] Sopinka J noted that although in several cases the suspicious circumstances primarily arise where the individual who prepares the Will, receives a substantial benefit, the dictum in **Barry v Butlin** extends to any well-grounded suspicion.
- [71] In this context, Sopinka J noted that suspicious circumstances may arise in three circumstances namely: -
- i. Circumstances surrounding the preparation and execution of the will;
 - ii. Circumstances which call into question the capacity of the testator;

- iii. Circumstances which show that the free will of the testator was overborne by acts of undue influence, coercion or fraud.

[72] Sopinka J then stated the approach which is to be taken where any well-grounded suspicion arises as it did in the case of **Vout v Hay**. He noted that where suspicious circumstances are present, “...*the presumption of due execution is spent and the propounder of the will reassumes the burden of proving knowledge and approval...*”

[73] Sopinka J also noted that notwithstanding that the presumption is spent, the propounder does not bear a burden in relation to the issues of fraud and undue influence. The burden of proving fraud rests on those attacking the will. Therefore, in this case, I have approached the 2019 Will in this way. The Defendants must prove knowledge and approval of its contents on the part of Carl Robinson whereas the Claimant must prove fraud and/ or undue influence.

Knowledge and Approval

Whether the Claimant have proved fraud and or undue influence to the requisite standard?

[74] The Defendants have sought to prove the validity of the 2019 Will through the testimony of both Defendants as well as Mr. Khorl Robinson and Mr. Cotterell. An important question for this Court is whether, having heard the evidence I find on a balance of probabilities that Carl Robinson executed this 2019 Will with knowledge and approval?

[75] I bear in mind that the Claimant’s case is that Mr. Carl Robinson did not sign this 2019 Will and if he did sign this Will, there was undue influence. Further, that Carl Robinson had an acrimonious relationship with both the 1st and 2nd Defendant. He asserts that he and Ms. Yvonne Palmer shared a very close relationship with Carl Robinson. Therefore, Carl Robinson would have disclosed the existence of this 2019 Will to both the Claimant and Ms. Yvonne Palmer if he did in fact execute such a Will.

- [76] I wish to treat with the relationship between the 1st Defendant and Carl Robinson. I have taken into consideration, the Claimant's evidence in paragraph 53 of his 1st Affidavit, and its contradiction with the evidence which has unfolded in this case, his evidence has significantly damaged his credibility. To depone in the 1st Affidavit that Carl Robinson and the 1st Defendant had a poor relationship, and most importantly that the latter "did not assist in the care of the testator" is in stark contrast to the evidence which unfolded in this case. Through the evidence, it becomes manifestly clear that the 1st Defendant contributed significantly to Carl Robinson's living expenses.
- [77] I take note that the Claimant conceded in paragraph 9 of his Affidavit filed on the 28th of June 2024 that the 1st Defendant had consistently contributed \$15,000.00 per week towards Carl Robinson's expenses for several years. However, the contributions made by the 1st Defendant did not end there. The evidence disclosed that the 1st Defendant also contributed significantly in terms of providing the resources to pay for nurses and helpers; as well as Carl Robinson's medical expenses.
- [78] Unfortunately, it was only when confronted with his exhibit, that he accepted that the 1st Defendant made significant contributions towards the medical expenses for Carl Robinson. I find it hard to believe that there was a strained relationship between the testator and the 1st Defendant in such circumstances.
- [79] In assessing aspects of the cross examination and the Affidavit evidence, I have formed the view that the Claimant in seeking to paint a picture of a strained relationship between the 1st Defendant and Carl Robinson, has brought in to question his own credibility in these proceedings. The evidence clearly contradicts his assertions, and a shadow has been cast on his creditworthiness.
- [80] This existence of a strained relationship formed an important pillar of this case, and the damage to his creditworthiness has resulted in me disbelieving his

assertions that he has never seen Mr. Cotterell at Lockhart Avenue for the execution of the 2019 Will.

[81] I accept Mr. Cotterell's evidence that the Claimant was present at the premises on the day he went there to take instructions, as also on the day when the Will was executed. I accept this evidence on the basis that the Claimant in paragraph 6 of his Affidavit, filed on February 29, 2024 stated as follows; ***"...As result of the friendship, I ended up going to Carl Robinson's house to see him and to spend time there keeping his company every day for a number of years..."***.

In such circumstances, it is not strange that he was in fact there. The question is, he being there, why would he deny this? I cannot say why this was denied, but I have formed the view that the Claimant was not happy with the contents of this will, as he does not receive a significant sum.

[82] That said, I do accept that the Claimant had a trusted relationship with Carl Robinson. The evidence discloses that the Claimant's name was placed on Carl Robinson's bank accounts and therefore, he was given access to his pension. Additionally, the Claimant made payments to the helpers, nurses and even the 2nd Defendant, as also Carl Robinson's bills. However, what is evident and not in dispute in this case is that there was a proper paper trail kept in terms of monies received for pension and the allocation of monies to cover Carl Robinson's expenses. Even monies received from the 1st Defendant were documented. This demonstrates that most importantly, the relationship between himself and Carl Robinson, was in fact professional. However, I accept that he was trusted not only by Carl Robinson, but also by the 1st Defendant.

[83] Notwithstanding the nature of the relationship, I must ask myself two questions:

- i. Can I believe that Carl Robinson would have told the Claimant to step aside at the material time when the 2019 Will was being executed?

- ii. Would Carl Robinson have informed him and Yvonne Palmer about the 2019 Will and the fact that their evidence is that they were not informed gives rise to a suspicious circumstance surrounding the execution of the 2019 Will?

[84] In answering the first question, I have formed the view that the evidence suggests that Carl Robinson would have done so. The Claimant's case as outlined in paragraph 18 of his 1st Affidavit, is that he was not present when Carl Robinson executed the 2016 Will. In fact, he states that although he took Carl Robinson to Duke Street, Carl Robinson did not tell him why he was going there, or why he went there on that date. He states that it was only sometime after when Carl Robinson gave him a copy of the 2016 Will that he realised why he had gone to Duke Street that day.

[85] Therefore, if on his own evidence, he was not invited to the execution of a previous Will, it is reasonable to accept that Carl Robinson would not have allowed him to remain during the discussions for this second Will. In my view, this is a reasonable conclusion and one which I am prepared to draw.

[86] On the second question pertaining to both the Claimant and Ms. Yvonne Palmer not being informed of the execution of a 2019 Will, I do not believe that this, by itself, means that Carl Robinson did not execute this document. A testator may elect to change his mind in terms of his intentions regarding his estate and may for reasons best known to himself, elect not to disclose a later Will to persons with whom he has previously shared executed testamentary documents. This may not be strange particularly where he has abandoned or altered the gifts intended for those individuals.

[87] In terms of the issue of knowledge and approval of the 2019 Will, I accept the evidence of Mr. Cotterell and Mr. Khorri Robinson in respect of what transpired at the material time when the 2019 Will was executed. I also accept Mr. Cotterell as a witness on whom I can believe in respect of his having taken the instructions of

Carl Robinson two days prior to the signing of the Will. His evidence is that he interviewed Carl Robinson and asked him what he wanted to put in the Will and he prepared this Will on the basis of these instructions. His evidence is that he prepared the Will and returned to the premises. That on his return, the Will was read to Carl Robinson who signed in the presence of Mr. Khorl Robinson and Ms. Smellie.

[88] In coming to this conclusion, I have carefully considered the discrepancies which have been outlined by Mrs. Shields. In my analysis of these discrepancies, I do not find that they are material. I bear in mind that the witnesses in this case are testifying concerning events which occurred some six years prior to giving evidence. I am cognizant that witnesses have differing powers of observation and memory. The law also allows me to accept a part of what a witness says and reject another, as well as to reject a witness's evidence entirely. This is the position I have taken regarding the discrepancies, as I do not find the discrepancies to be material or over and above that which is a common feature in cases where the incident is not of a recent occurrence.

[89] I will state that my overall assessment of the witnesses is that I found the evidence of Mr. Cotterell regarding his narrative of the events which occurred on both occasions when he visited the house to be more reliable than the other witnesses. I bear in mind that the 1st Defendant although recalling that he was at the premises on more than one occasion, he was unable to give details of the second occasion and that the 2nd Defendant gave details concerning the date of the signing of the Will only. I bear in mind that this Will was executed in the year 2019, six (6) years prior to evidence being taken and I form the view that this accounts for their lapse in memory. I observed the demeanour of all the witnesses for the Defence's case as regards the execution of this 2019 Will and I found Mr. Cotterell and Mr. Khorl Robinson's testimony to be reliable in terms of this critical event.

[90] In assessing the evidence of Mr. Cotterell, I have paid due regard to the point made by Mrs. Shields in her submissions that this case is distinguishable from the case

of **Maw v Dickey et al** (1974) 52 DLR (3d) 178, where heavy reliance and confidence was placed on the involvement of very senior counsel. Having examined **Maw v Dickey**, the solicitor was deceased at the time of trial and therefore, the court did not have the benefit of his evidence at trial. In that context, the court considered the seniority of counsel together with the evidence of his legal secretary in considering the issue of undue influence which was raised at the trial of that matter. In the case at bar, the court had the benefit of making its own determination of the credit worthiness of the solicitor engaged in the preparation of the 2019 Will. This is an important distinguishing feature of this case.

[91] In concluding that there was knowledge and approval, I have also considered the character of the testator as disclosed through the testimony of the witnesses as well as the contents of the Will itself. The evidence disclosed that Carl Robinson was physically unwell and laboured under several ailments which affected his mobility and as such he had to depend on others including the Claimant. However, there was no evidence of any form of mental incapacity on the part of Mr. Carl Robinson. This did not arise on the Claimant's or the Defendant's case. Based on the evidence of Mr. Cotterell, Mr. Carl Robinson gave him instructions and asked him questions and he also read over the will to him after which he signed.

[92] I do not believe that the Claimant has proven a case of Fraud to the requisite standard. I have assessed this case on the basis of the evidence presented to determine whether the 2019 Will was procured by fraud through the forging of Carl Robinson's or in the alternative whether if he had in fact signed it, he did so as a result of undue influence.

[93] In approaching the case for the Claimant, I must be satisfied that these allegations are proved to the requisite standard. In determining this issue. I have considered the definition of Forgery as contained in section 3 of the Forgery Act. This section reads as follows:-

"... 3.-(1) For the purposes of this Act, "forgery" is the making of a false document in order that it may be used as genuine, and, in the case of the

seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

(2) 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: Provided that a document may be a false document..."

[94] In approaching the issue of fraud, I am guided that he who asserts fraud must prove such allegation to the requisite standard through cogent evidence. The authorities suggest that the more serious the allegation, the more cogent the evidence required to prove the fraud to the standard of a preponderance of possibilities. In this case, the allegations of fraud are built primarily on the opinion of Ms. Beverly East that the signature on the 2019 Will does not accord with the known handwriting of Mr. Carl Robinson.

[95] The evidence of Ms. Beverly East, that it is her opinion that the signature on the 2019 Will was not consistent with the known signatures of Mr. Carl Robinson. If I

accept her evidence, then the case of fraud would be proved to the requisite standard.

[96] Unfortunately, in the case at bar, I am unable to accept the conclusion and findings of Ms. East for the following reasons: -

1. Ms. East's reliability was compromised when she admitted in cross examination that the old reference books required that twenty (20) samples be taken and that in her practise she asks for five (5) samples to enable her to conduct a reliable examination. Having said that, she then stated that she is able to conduct a reliable examination with only one known sample and that cases have been successful with no known sample. I found this rather curious considering that the aim of her examination is to compare handwriting samples as against a questioned document.
2. In this case, I bear in mind that the samples consisting of the driver's license and electoral identification were dated. In cross examination, Ms. East agreed that the driver's license which she examined was dated July 9, 2008. This would result in the signature on that document being done eleven (11) years prior to the 2019 document. As regards the electoral identification card for Mr. Carl Robinson, Ms. East agreed that the date on the card being 2014 suggests that this signature purports to have been made in the year 2014 some five (5) years prior to the 2019 document. Although Ms. East disagreed that the age of the ID card reduces the reliability of her findings, she did accept that it is her usual practise to request samples which are close in time to the questioned sample as a person's handwriting may change overtime.

I have considered her evidence that even if such is unavailable, she is still able to conduct her examination on the basis of habitual writing patterns. However, I must consider whether the age of these documents may be significant given the circumstances of the case at bar.

3. In my view the samples also analyzed from the booklet could not be considered as having been generated closer in time to the year 2019. There is no evidence in this case regarding the time period in which Carl Robinson wrote in this notebook. Therefore, I am unable to find that the writings in this book were in close proximity to the year 2019. In fact, the cross examination disclosed that there was one date included in the notebook which reflected the year 2001. On this basis, I conclude that the material which Ms. East examined were specimens which were created several years prior to the questioned document.
4. This is significant in this case and operates to weaken the reliability of her evidence. The peculiar nature of the evidence in this case is that Mr. Carl Robinson's health declined significantly after the year 2018 and up to the time of his death in the year 2020. Ms. East accepted that an examiner's knowledge of a person's illness and even the medications being taken is useful when conducting handwriting analysis. The evidence is very clear that in the year 2019, Carl Robinson was very ill, laboured under physical frailty and was on medication. Ms. East conducted her examination without any knowledge of Carl Robinson's illness or medications being taken.

The court has to take this into account in assessing the reliability of Ms East's findings, given that her evidence is ***that illness and***

medication may influence a person's handwriting. The reliability of her findings is further compromised as she had no known handwriting which was created during that critical time between 2018 and 2019 when Carl Robinson's health declined. Had she been seized of such material, this would have strengthened her testimony that the changes observed in the handwriting were not due to illness.

5. The court has to consider whether illness could have impacted his handwriting. Ms. East's evidence was unhelpful in this regard. She accepted that in a previous trial she had given evidence that knowing the nature of a person's illness and even the medication being taken is useful in conducting handwriting examinations. She also accepted that illness may influence a person's handwriting. She did not have such information concerning Mr. Carl Robinson's illness or the medications he was taking in this case.

This leaves the Court to consider whether this could have accounted for the differences she observed in the known samples and the questioned signature. The fact is that she did not include that as a factor in her examination and this operates to diminish the value and reliability of her findings in this case. This is premised on her acceptance that such circumstances may impact an individual's handwriting.

In the case at bar, Carl Robinson was ill to the point that he had twenty-four-hour assistance, whether in the form of helpers and at some points nurses. He had challenges with his mobility to the extent that when Mr. Cotterell attended the home, he states that Carl Robinson was assisted on to the verandah.

6. In terms of the handwriting on the driver's license and the electoral identification cards, the evidence suggests that these were done prior to the decline in his health. This is important in this case, and I form the view that having samples of his handwriting closer to the questioned document would have enhanced the reliability of Ms. East's findings due to the peculiar nature of this case, that being that Carl Robinson's physical health had declined at the material time of May 2019.

[97] For these reasons, the evidence of forgery lacks the requisite cogency which is required given the seriousness of the allegation. Consequently, I am not satisfied on a balance of probabilities that the signature appearing on the 2019 Will was not that of Carl Robinson, or that the Will was procured by fraud. The Claimant has therefore failed to discharge the burden of proof placed upon him, and I find that the Defendants, as the propounders of the 2019 Will, have established its validity.

[98] Having found that the 2019 Will is a validly executed Will, it would operate to revoke all previously executed Wills. As such, I need not pronounce on whether the copy 2016 Will is the true Last Will and Testament of Carl Robinson.

CONCLUSION AND ORDERS

[99] For the reasons set out above, I am satisfied, on a balance of probabilities, that the document executed on 21st May 2019 is the duly executed Last Will and Testament of Mr. Carl Robinson.

ORDERS

1. 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 Carl Robinson 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.