IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2008 HCV03701

IN THE MATTER of an application for an executor to accept or refuse probate pursuant to part 68.49 of the Civil Procedure Rules 2002 (as amended)

A N D

IN THE MATTER of the probate of the will in The estate of Joseph Jeremiah (deceased)

BETWEEN	*OLWEN JEREMIAH*	*CLAIMANT*
A N D	*WINSTON TOMLINSON*	*1ST DEFENDANT*
A N D	*LOIS TOMLINSON*	*2ND DEFENDANT*

Appearances

Mr. R. Paris instructed by Paris & Company for the Claimant.

Ms. K. Collman instructed by Murray & Tucker for the defendant

Heard: March 11, June 6 and September 30, 2009

In Chambers

P.A. Williams, J

Background

This matter is an unfortunate example of a family torn-apart, embroiled in a dispute over what is commonly referred to in Jamaica as "dead lef".

The Jeremiah family -2 sisters, a brother and a brother-in-law are now before the court due to property left by their father in Martha Brae, Trelawny.

Joseph Samuel Jeremiah died on the 16th of April, 1994 and left a document purporting to dispose of his house and its land registered at Volume 949 Folio 422 of the Register Book of Titles. He gave this property to his daughter Olwen Garret Jeremiah – the claimant. On the face of it, this will was witnessed by Winston Tomlinson – son-in-law of the deceased and now 1st Defendant and Wilbert Jeremiah son the deceased, on 6th February, 1994.

The 2nd defendant is the daughter of the deceased, wife to the 1st defendant and sister to the claimant. The 1st defendant and the claimant were named as executors of this will.

The claimant sought her inheritance by having this will probated. Her efforts are being thwarted as the persons who signed as attesting witnesses say they did not sign the document until after the death of Mr. Jeremiah.

This being a clear breach of the requirements of the Wills Act means the will was not properly and duly executed and cannot be probated.

The claimant filed a fixed date claim form on the 23rd July 2008 and seeks that the court grant an order pronouncing for the validity of the will of the deceased Joseph Jeremiah dated 4th February, 1994 or alternatively if the will is pronounced as valid that the claimant is entitled to a grant of probate of the last will of Joseph Jeremiah deceased.

When the hearing of the matter commenced on March 11, 2009, an amendment was sought for the heading of the fixed date claim form to read for the court to pronounce

on the validity of the will of the deceased Joseph Jeremiah dated February 6,1994 pursuant to 68.54.3 (iii) of CPR 2002.

The evidence

For the claimant

In her affidavit filed March 6, 2009, the claimant asserted that on the day after her father's funeral while she and her sister and her husband, and their brother were sitting on the porch of her sister's home the 1st defendant read the last will and testament of her father by which he had devised to her his residence at Martha Brae in the parish of Trelawny.

She stated she was not present when this will was dated or signed by her father or the attesting witnesses. She denies knowing at that time that this will was undated and unsigned by any witnesses.

She later learnt her sister was doing business without permission on the property. However, her sister agreed to pay rent and in turn a lease would be signed in the sister's favour to facilitate this. She said this was done on one of her visits to Jamaica when it was also agreed an account would be opened at N.C.B. for rent to be lodged.

In 2006, she explained, when the 2nd defendant was visiting her in Florida a discussion took place about the title for the property being placed in the claimant's name and about the rent. This she said led to the 2nd defendant telling her for the first time that the will their father had left had not been dated or witnessed.

The claimant went on to complain about the fact that the 2nd defendant and her family were reaping the benefit from the property while not paying rent.

In her evidence in chief she explained that the conversation referred to in her affidavit took place in 2005 in Key West and not in 2006.

Under cross-examination she claimed that she never looked at the will which was read by the 1st defendant. She is in no position to say whether or not it was signed by anyone at this time. She denied asking her brother Wilbert Jeremiah to sign as a witness and was insistent that she was not aware that the will was not valid.

For the defendants

The 1st defendant in his affidavit stated that it was after the funeral while at the home of the 2nd defendant, he was given a document by her which appeared to be the last will and testament of the said Joseph Jeremiah. He read it out in the presence of the claimant, the 2nd defendant and Wilbert Jeremiah. He noticed it was signed by the testator but was not dated or witnessed. Wilbert Jeremiah questioned what should be done and the 2nd defendant said they would assist the claimant by just witnessing and dating the document.

This was done by himself and Wilbert Jeremiah in the presence of the claimant and the 2nd defendant.

He stated further that the claimant and the 2nd defendant are now estranged and the latter has been asked to deal with the estate but has not done so. He therefore decided to refrain from taking steps as an executor despite requests to do so.

In his evidence-in-chief, he maintained that when he signed the will, Joseph Jeremiah was not present.

He admitted that he told the claimant that she should be paid rent for the use of the property, but points out that he had expended monies to improve it. He further indicated that it is his son who now operates a business on the property; permission having been sought and obtained from the claimant.

On the issue of a bank account for payment of rent, the 1st defendant maintained there was no need for any discussion about opening a new account as she already had one at a credit union.

Under cross-examination he admitted his knowledge of a discussion while he was in Long Island concerning problems between the sisters including the probating of the will. He had not been in Key West and was unaware of the discussions that had taken place then.

Concerning the will; the 1st defendant agreed that he has never said the document was not in the handwriting of the deceased. He was familiar with both the handwriting and the signature of the deceased and acknowledged the document appeared to be that of the deceased.

He indicated the deceased had written and destroyed other wills before – indeed he was in the habit of writing wills.

The 1st defendant maintained that the 2nd defendant had given him the will to read after stating she had found it at the deceased's house. He was not with her when she found it, she did not tell him where she found it and he didn't ask. He doesn't recall when she gave it to him initially, but it would have been a few days before the funeral. The explanation she had given him, was that she had gone to her father's house a few days before when no one was there and had gone through his things and found the will.

Eventually following discussions firstly between himself and the 2nd defendant and then between himself, the 2nd defendant and the claimant a decision was made.

The 2nd defendant he said had urged and he had agreed that the will should be signed and given a date prior to the death, "so person in will could benefit".

He referred to a conversation held with the 2nd defendant where she had expressed thinking it was strange and unfair that her father should have left the property to the claimant as they had been the ones who cared for their parents. She also felt that it was because of a disagreement that she had had with her father before he died that he had left the property to the claimant. He also said that she recognized she could be "terrible" and just destroy the will but chose to do the "next best" thing and get it signed and witnessed.

He acknowledged that the issue of probating arose when the sisters started having problems and when the claimant wanted her name on the title.

As to the circumstances surrounding the reading of the will, the 1st defendant maintained all four persons had looked at it. The claimant not only saw it then but had known of it from before the funeral. She had seen it before the reading had discussed it and it was agreed Wilbert Jeremiah would be asked to sign. He asserted that when asked, Wilbert Jeremiah reluctantly agreed and signed after he had done so. He spoke of them using the same pen to sign. He dated as well as signed it. He admitted to placing a line through the blank parts at the front and on the second page to ensure no one would be able to write on it. He acknowledged that there were two different coloured inks appearing on the document but since he knew the handwriting on it, this fact was of no significance to him.

Wilbert Jeremiah he insisted was the only person who signed in his presence.

When further pressed he alleged he was never asked to probate the will, he never kept it in his possession but it was always with the 2nd defendant to whom the claimant herself had handed it after reading.

It is to be noted that the 1st defendant recognized that the actions he took in signing the will in the absence of the testator and after his death, were not right but said he felt at the time this should be done so the claimant would benefit from the deceased's last wishes.

The 2nd defendant in her affidavit said she found the will in the desk of the deceased. She said it was after the burial of her father that the four persons concerned were at her home when the will was read by the 1st defendant. She said it was Wilbert Jeremiah who asked what was to be done and she it was who pointed out that since the deceased had tried to devise the property to the claimant they should assist by just witnessing and dating it.

The signing took place in her's and the claimanat's presence.

She admitted going into occupation of the property. She also admitted that since August 2006 when the relationship between herself and the claimant became estranged, the claimant insisted that the purported will and certificate of title for the property be turned over to her.

Under cross examination she said she actually found the will on the afternoon of the day her father died. She insisted the claimant had been told about the situation with the purported will from before her arrival in Jamaica for the funeral of their father. She explained the claimant had arrived the Thursday prior to the Saturday of the funeral.

This contradicted what was contained in her affidavit which seemed to be saying the claimant learnt of the will after her arrival in Jamaica.

She agreed with the 1st defendant's evidence that she had told him the will was found but not where it was found and he was not with her when she found it. She also spoke of telling him of the unfairness of the property being left to the claimant when she it was who had cared for their parents. She confirmed saying she would go along with it since it was what the deceased wished but to her mind it was of no use since the will was not witnessed.

She insisted that there were discussions with the claimant about the will – they discussed it with each other as well as with the 1st defendant.

She was unable to recall who suggested that someone should be asked to witness the will and did not recall who suggested it would be best if someone in the family be asked. She was unable to say if in fact it was the 1st defendant who suggested that Wilbert Jeremiah be asked.

She however recalled this conversation took place on the Thursday before the funeral.

She also recalled it was the day after the funeral, a Sunday that Wilbert Jeremiah was told about the will, she however, was unable to recall who told him. She recalled such details that it was after breakfast while they were all seated on the verandah that the reading took place

The 2nd defendant does not deny that she initially had no problem dealing with the will as they did. She acknowledged the property was to be the claimant's based on their

father's wishes. She and the claimant were once very close - she did her business, she was trusted by her. She even cared for her children.

She admitted things changed when they "fell out" sometime in 2005. She admitted them discussing the probating of the will at that time. She however denied any discussion about non-payment of rent. A lease had been obtained at her suggestion so she would use the property. She is insistent that there was no discussion about rent as she believed she was running the business there for the benefit of both herself and the claimant.

She therefore denied the "blow up" was about rent. She was pressed for the reason for the blow up but was reluctant and seemed unable to respond and eventually the court felt this line of questioning should not be pursued.

She was in agreement however that it was based upon what had happened between them that she was now unwilling to facilitate the probating of the will to give effect to what she accepted was her father's final wishes.

She insisted that she told her sister of the unsigned nature of the will and that her sister in turn knew all along that it had not been properly signed and witnessed. She however insisted further that there had been no discussion about probating the will when it was initially read. She however recognized that it would eventually have to be probated and that was why it had been dealt with in the manner they had.

The final witness for the defence was Wilbert Jeremiah. In his affidavit he too stated that it was after the funeral while at the home of his sister – the 2nd defendant, along with the others that the will was read. He said that he had been informed by the first defendant sometime before that the will had not been witnessed or dated and that he

then noticed what he had been told to be true. He said he asked what should be done, and it was decided that in a bid to assist the claimant, he and the 1st defendant would witness it. This was done in the presence of the claimant and the defendants.

Under cross-examination he agreed that it was the day after the funeral on a Sunday morning after breakfast while on the verandah that the 1st defendant took out and read the will.

He said he initially didn't think he should sign it but was persuaded to do so and did so to facilitate it being probated.

He said that it was the same week their father had died that his sister – the 2nd defendant – may have mentioned to him that the will had not been witnessed or dated.

He said he did not discuss it with her on his arrival for the funeral from Mandeville where he lived.

When pressed he was unable to recall such details as what was put before him to sign the will or where he got a pen to sign.

He acknowledged that the handwriting and signature on the will looked like that of his father. He maintained that it was the 1st defendant who dated the will and that the claimant was present when this all took place.

He admitted knowing that it was not correct for him to sign the will in the manner he did but did so after all three (3) others had persuaded him.

He concluded his evidence by advising the court that he does not have any problems with his sister Olwen – the claimant.

The submission

For the claimant

Mr. Paris submitted that this application was in effect for an order that this court pronounce for the formal validity as distinct from or opposed to the substantial validity of the will. He opined that since defendants are not alleging that the document is not testamentary in nature nor that it does not reflect the wishes of the deceased, the only matter to be considered was whether it was duly executed in conformity with section 10 of the Wills Act.

He pointed out that it is still essential that the testator's signature be placed on the paper after the testamentary dispositions, unless the appending of the signature and writing of the will were all part of one operation. He referred to **Williams, Mortimer and Sunnocks Executors, Administrators and Probate page 141 – paragraphs 12 – 14 and cited Wood v. Smith 1993 1 Chan 90; Weatherhill v. Pearce 1995 1 WLR 50 approving dicta in Re White 1991 CL 1** in support of this submission.

He went on to submit that the fact of the matter is that the witnesses are attesting to the fact that the signature is that of the testator – they need only have an opportunity of seeing the signature of the testator so as to be able to acknowledge the signature was that of the testator.

On the allegations in the instant case, he pointed out that even though the attesting witnesses claimed to have signed after the death of the testator they have not alleged the signature was not in fact his. He also pointed out that the witnesses admitted intention in signing the document was to acknowledge his signature and to give effect to his wishes.

Mr. Paris opined that this claim turns on whether the court believes the defendant's allegation of a non-valid execution of a will which on face of it appeared valid. He reminded of the presumption of due execution vide page 153 paragraph 12 – 27 of **Williams Mortimer and Sunnocks** [supra].

He argued that there is some significance to fact that the defendants and Wilbert Jeremiah stand to gain financially if the will is not propounded and in fact they are the only one who have benefited thus far.

He relied on the authority of **Vere – Wardale v. Johnson 1949 P 295** to support his submission that even if one or more witnesses profess to remember the transaction and state that the will was not duly executed, this negative evidence may be rebutted by that of other witnesses. He also submitted that the court may pronounce for the will even where attesting witnesses give evidence negativing due execution if they are found not to be credible or that their memories failed them. He cited **Re Moore P 44**; **Pilkington v. Grey 1899 AC 401; Neal v Denston (1932) 147 LT 460** in support of this proposition.

He recognized that the defence was relying on the case of **Wyatt v Berry 1893 P 5** and agreed that it was helpful in resolving the issue before the court.

He referred to the finding of Justice Gorrel-Barnes in the case where he held at page 10 -

> "If I felt any doubt or saw any reason to believe that the Hudsons
> are not accurate my view would be the other way. But unfortunately
> the recollection of the two witnesses is good for that"

Mr. Paris felt this to be the key point as in the instant case the opposite situation existed. In his estimation the recollection of the defendants and their witness leave much

to be desired and failed to support each other. He felt there must be some doubt in the mind of any reasonable tribunal as to the accuracy of the recollection of the witnesses as to the dating and attestation of the will.

He cited the case of **Neal v. Denston** (supra) quoting the head note which reads:-

> "Where an executor was put to proof of the due execution of a will which was disputed on the ground that the two attesting witnesses were not present together when the testator signed the will or acknowledged his signature, the evidence of the attesting witnesses as to the circumstances of the execution was found wholly unsatisfactory and unreliable and the court upheld the principle omma praesumuntur rite esse acta and pronounced for the will".

Mr. Paris highlighted the fact that the claimant maintained in her evidence that she was present at the reading of the will and the date of the will was not inserted in her presence or with her prior knowledge. He also referred to the conflict in the viva voce evidence of the 2nd defendant and her brother Wilbert Jeremiah regarding whether she had informed him of the problem with the will prior to the day it was read.

He urged that the testator in this case was an old experienced man who had written his last will on a proper will form and given the evidence of him being in the habit of re-writing his will, it can be presumed he knew what he was required to do to make his will valid – **Lloyd v. Roberts 1855 ER Volume 14 page 159** is cited in support of this proposition.

For the defence

Ms. Collman identified the sole issue before the court as the validity of the will.

The English case of **Wyatt and Berry v. Berry and others 1893 P 5** is the only authority she referred to. She too refers to same quote as Mr. Paris did in his submission.

In reviewing the evidence she highlighted the fact that the claimant said she never looked at the will and she is not in a position to assist the court in making its determination as it is her evidence that she was not present when the will was signed or witnessed.

From the evidence of the 1st defendant she highlighted that the will was not dated or signed until after the funeral. Further she pointed to fact that he said the pen used to sign and place his particulars on the purported will was also used to date it and draw "squiggled lines" through portions of it.

From the 2nd defendant came evidence similar to that as the 1st defendant that the will was dated and signed after the funeral and it was she who had found it in its undated and unsigned form.

The witness Wilbert Jeremiah, Ms. Collman advised, is a Justice of the Peace and he corroborated the evidence that the will was signed and dated after the death of Joseph Jeremiah. He stating he used the same pen as the other attesting witness is a fact Ms. Collman referred to as significant.

Ms. Collman pointed out that the actual document purporting to be the will of Joseph Jeremiah is in fact written with two separate and distinct inks. Those sections written by the testator is in one colour while those written by the attesting witnesses is different.

In applying the law to the evidence, Ms. Collman submitted that the evidence of the two attesting witnesses demonstrated that the will was not signed by the deceased in their presence neither did they sign in his.

She supported her submission that the will was signed at different times by positing that if signed at the same time they would have all used same pen.

She cited **Wyatt and Berry v. Berry** (supra) as demonstrating that even where there is no dispute that what is contained in the document is the intention and will of the deceased and bears his signature, the failure to comply with the requirements of the Wills Act nevertheless renders, the purported will invalid. Further she submitted where there is clear and compelling evidence from the attesting witnesses that the will is not properly executed, such evidence should be accepted by the court following principles in the said case.

Ms. Collman opined that the evidence of the defendants and their witness Wilbert Jeremiah is agreed as it relates to the time the will was witnessed – the day after the funeral. She is insistent that the physical evidence – the document – supports the defence.

She concluded that it is clear that the purported will of the deceased was not witnessed in accordance with the provisions of the Wills Act.

The Law

It is perhaps useful to commence by a reminder as to what the law says as it relates to the execution of wills found at section 6 of the Wills Act. The relevant provisions states –

> "No will shall be valid unless it shall be in writing and executed in manner herein aftermentioned that is to say it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time and such witnesses shall attest and subscribe the will in the presence of the testator but no form of attestation shall be necessary........."

It is clear that the witnesses are not only signing to acknowledge the signature of the testator but this must be done in his presence while both are present at the same time. The section of the text Mr.Paris referred to in his submission explains this provision as follows:-

> "For a valid acknowledgement the signature of the testator must have been on the will, the witnesses must have seen the signature or have had the opportunity of seeing it, and some words must have been spoken by the testator or some act done by him (or suffered by him to be spoken of done by another in his presence and on his behalf) as may properly be regarded as an acknowledgement of his signature".

Per Williams, Mortimer and Sunnocks (supra) page 144 paragraphs 12-16

A court is generally reluctant however to rule against the validity of a will. One of the earlier pronouncements in this area is by Sir. Francis James in the case of **In the Goods of Peverett 87 LT Rep. 143 [1902] P 205** at pages 206 and 207 where he said:-

"Two things may be laid down as a general principle – The first is that the court is always extremely anxious to give effect to the wishes of persons if satisfied that they really are their testamentary wishes, and secondly the court will not allow a matter of form to stand in the way if the essential elements of execution have been fulfilled".

In **Harris v. Knight (1890) 15 PD 179** Lord Justice Lindley said:-

"The maxim omnia praesumuntur rite esse acta is an expression in a short form of a reasonable probability, and of the propriety in point of law of acting on such probability. The maxim expresses an inference which may be reasonably drawn when an intention to do some formal act is established; when the evidence is consistent with that intention having been carried into effect in a proper way, but when the actual observance of all due formalities can only be inferred as a matter of probability………. The maxim only comes into operation where there is no proof one way or the other, but where it is more probable that what was intended to be done was done as it ought to have been done to render it valid; rather than that it was done in some other manner which would defeat the intention proved to exist, and would render what is proved to have been done of no effect".

The authorities cited and others in this case clearly demonstrate that the court's pronouncement on a will's validity, when its due execution is being challenged, ultimately resolves on the assessment made of the witness.

In **Wyatt v. Berry** [supra] in arriving at his decision Justice Gorrell Barnes at page 9 and 10 in assessing the witnesses said:-

> "………they were both called and knowing the point which would arise I watched them with great care. They seemed to me to be both very intelligent men and they showed no hesitation when questioned as to their recollection of what occurred in respect of the will………… If I felt any doubt or saw any reason to believe the Hudsons were not accurate, my view would be the other way. But unfortunately the recollection of those two witnesses is too good for that…….. It appears to me that for the reasons I have stated their evidence must be accepted by me. Therefore though I do it reluctantly I must pronounce against this will as being invalid".

In that case the evidence ultimately accepted was that the signature or acknowledgement of the testator was not in the presence of both the attesting witnesses both present at the same time when they signed.

In **Neal v. Denston** [supra] the validity of a will was disputed for similar reasons as in **Wyatt v. Berry.** The court found the evidence of the attesting witnesses unsatisfactory and unreliable and applied the presumption.

Lord Justice Langton found the evidence of the attesting witnesses to be unsatisfactory in the extreme and at page 463:-

> "I go much further than saying there is some doubt, that I have the gravest doubt about the recollection of any of the attesting witnesses. I pronounce for the document propounded by the

> plaintiff, the will".

Lord Justice Langton referred to the decision of **Wyatt v. Berry** [supra] and quoted Justice Gorrell Barnes at page 9 speaking of cases **Wright v. Sanderson (1884) 50 LT Rep 769, 9 Prob. Div. 149 and Lloyd v. Roberts (1858) 12 Moo P.C 158** –

> "The bearing of these two cases appear to me to be quite clear. They really go to this – that where there is any doubt about the recollection of the attesting witnesses, where there is anything from which the court can fairly say that the will ought to be held as good and that the recollection of the attesting witnesses ought not to be relied on as against the will, the court may say that it is satisfied that the will was duly executed."

In **Lloyd and Hart v Roberts (1855) volume 14 ER 159** the court found that an attesting witness must have been mistaken or his memory failed him. The court accepted that since the testator was a professional man – an attorney- and was well acquainted with the necessity of a proper execution and the appearance of the will itself allowed them to apply the presumption for the will's validity.

In **Dayman v. Dayman (1895) 71 LT 699** both attesting witnesses swore the will was not signed by them in the presence of the testator but their evidence was inconsistent in other matters. A witness to the execution swore it had been duly executed. The court found this witness to be truthful and trustworthy and that of the attesting witnesses to be largely accurate. The will was pronounced valid.

These cases demonstrate what must be the logical approach - if the court believes witnesses who say the will was not duly executed it must rule that way. The opposite

then must be true – if the witnesses are found incapable of belief , if there is no credible evidence to challenge the presumption of due execution then the presumption will prevail.

Application of the law to facts found

The two defendants and their witness were subject to careful examination. It was never; and given the circumstances may not have been possible to; suggested to them circumstances of their signing in the presence of the testator.

The claimant herself does not say the will was properly signed by all relevant persons at the time it was read to her. She is adamant however that it was not signed by her brother-in-law and brother in her presence.

There were points of inconsistency in the evidence of the witnesses and discrepancy between the witnesses. Of course one must bear in mind the time that has elapsed between the time this signing was alleged to have taken place and the time of this hearing – over twelve years. In the circumstances it is anticipated that memories might not be as clear in all of the witnesses. The question is the extent to which the overall credibility of the witnesses has been affected.

Mr. Paris gives one example of the contradictory nature of the evidence of these witnesses and urges that they cannot be regarded as credible.

Ms Collman points to what she sees as the consistency of the witnesses. She is however incorrect in her assertion that all three agree as to the time and place they say the signing took place. The 1st defendant in fact under cross-examination said he was unable

to recall those details. He explained that his affidavit contained just the essence of what had taken place.

Ms. Collman found much support for her submission that the will was not duly executed in the fact that there were distinctly different coloured inks used on the document. There is no requirement in law for the same pen to be used in the preparation of a will. It is not to my mind impossible for the testator to use his pen whereas the witnesses use their own and they sign in each others presence using their different pens.

Further a testator might well have written and signed his will with one pen on one day and acknowledge it in presence of his attesting witnesses on another day with them using another pen to sign. It cannot therefore be regarded as conclusive that because two different pens were used, the signing must have been done at a different time.

However, given that it was not challenged, the explanation given by the 1st defendant, his evidence can be considered as being supported by the fact that there were these two distinctly different inks.

It is somewhat significant that the witnesses spoke to the reluctance of Wilbert Jeremiah to participate in this signing as he is a Justice of the Peace. Certainly he would be aware of the impropriety of what he was being asked to do and it is therefore perhaps expected it would have taken some persuading to have him agree.

It is useful and significant to note that the defence states it was their desire to fulfill the wishes of the deceased – no matter how unfair they thought it was. They accepted he wanted the claimant to have the property and treated it as if it was hers – sought her permission at one stage for it to be used, obtained a lease from her, and at least one witness spoke to agreeing she be paid rent.

It is therefore to be considered that with a break down in the relationship between the sisters whether a feeling should prevail that they should no longer seek to assist her by lying about the due execution of the will, or are they now feeling they should seek to get some financial benefit by now lying to prevent her from getting what they have previously accepted was to be hers. Having assessed the defendants and their witness I find that the first of these considerations is more acceptable. I find that their recollection may have been shaky in some areas but not on the important issues. The circumstances they have outlined as to how the will was witnessed and dated have not been sufficiently challenged to render it unbelievable.

In the circumstances I find I must pronounce against this will and give judgment for the defendants.

Order

Fixed date claim form dated July 23, 2008 is dismissed. Each party to bear own cost.