

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE

SUIT NO. P. 292 OF 1984

BETWEEN

REGINALD RAMSARAN

PLAINTIFF

AND

LINTON RAMSAHAI ET AL

DEFENDANTS

A. Pearson for Plaintiff

D. Morrison for Defendant

HEARD; MARCH 8 AND 9 1989.

EDWARDS J.

In this action the plaintiff is claiming that a Will dated 29th May 1978 made by the late Charles Ramsahai is not valid as the formalities of attestation did not comply with the Wills Act. Consequently the court should pronounce "for the force and validity" of an earlier Will dated 19th October 1971 made by the testator - Charles Ramsahai.

The plaintiff is named as one of the executors in both Wills. The earlier Will will be referred to as the first Will and the later Will as the second Will. The defendants are close relatives and beneficiaries of the deceased.

The second Will prima facie appears to be duly executed. It bears the signature of Charles Ramsahai over the type-written words CHARLES RAMSAHAI - TESTATOR at the foot of the Will and beneath that it contains an attestation clause which shows by the signatures affixed thereto, that it was witnessed by a Moses Jumi, a farmer of Featherbed Lane, Spanish Town P.O. and Veronica Lee, a typist of 11 Frank Hall Drive, Spanish Town P.O. - both in the parish of Saint Catherine.

The attestation clause reads as follows:

"Signed by the abovenamed testator as his last Will in the presence of us both present at the same time who in his presence and in the presence of each other have hereunto subscribed our names as witnesses."

One of the attesting witnesses, Veronica Lee, no longer resides in Jamaica. At the relevant time i.e. 29th May 1978, she was a secretary in the office of Mr. Woodhouse where the second Will was executed.

The other attesting witness Mr. Moses Jumi gave evidence that the first signature which is shown on the second Will as a witness, is his signature but when he signed he was not aware of the nature of the document he was signing. Mr. Woodhouse was his lawyer and on the day in question he had attended Mr. Woodhouse's office on business of his own connected with proceedings to eject tenants and collect rents. He passed through the waiting room of Mr. Woodhouse's office, entered the secretary's office, that is Miss Veronica Lee's office, and was sent into Mr. Woodhouse's inner chamber where there were four other persons present in addition to Mr. Woodhouse, making five persons in all. The four persons were seated around Mr. Woodhouse's desk and he was given a seat around another desk some 12 feet away which is normally occupied by Mr. Woodhouse's sister who was absent.

He inquired about his matter and was about to leave when he was asked by Mr. Woodhouse to stay as he wanted him to sign something for him.

After waiting a while Mr. Woodhouse brought him a document, handed him his pen, showed him where to sign and he signed. He said at the time he signed, he did not know what he was signing, was not told and did not enquire as he thought it pertained to the matter which Mr. Woodhouse was looking about for him.

He said he was not introduced to any of the four men in the office, he does not know the testator Charles Ramsahai and Miss Lee was not present when he Jumi signed the document. He did not take any notice whether any other handwriting was on the document when he signed. He further testified that it was just one document he signed that day and he signed it in only one place and that is where his signature appears on the second Will.

Shown a carbon copy of the second Will with signatures in writing, the witness said he saw "Moses Jumi" in the document but it didn't "look like his writing" and he didn't sign it.

He said the four men in the office could not see what he was signing as they were seated at Mr. Woodhouse's desk some 12 feet away.

He further stated that Mr. Ramsahai did not sign the second Will in his presence or in the presence of Miss Lee, himself and Mr. Woodhouse,

all four being present at the same time.

There is a presumption of due execution of a Will where there is a proper attestation clause (as in the instant case) even though the witnesses have no recollection of having witnessed the Will but this presumption may be rebutted by evidence of the attesting witnesses or otherwise.

Attestation means that the document is executed in the presence of a witness who signs by way of attesting the execution. SHAMA PATTTER v ABDUL KADIR RAVUTHAN (1912) 28 T.L.R. 583. The mere fact that a person is present at the time of execution does not make him an attesting witness. CUSSENS v SKINNER (1843) 11 M.V.W. 161, 168.

The authorities - see for example Phipsons manual of the Law of Evidence Vol. 8 p. 243 show that a Will must, subject to certain exceptions mentioned below, be proved by calling the attesting witness. If there are several such witnesses, one only need be called. Where however the witness denies the execution or refuses to testify, other evidence will be admissible. There is no rule that the evidence of a witness to the document is conclusive or exclusive of other evidence. If he gives evidence that the requirements of the law were not carried out, other evidence is admissible to show that, in spite of what he says, the Will indeed was in fact duly executed.

In Re Vere - Wardale (deceased) 1949 2 All E.R. p. 251 Willmer J. quoted with approval from Mortimer on Probate Law and Practice as follows:-

"Even if witnesses profess to remember the transaction and state that the Will was not duly executed (that the testator did not make or acknowledge his signature in their joint presence, or so forth), this negative evidence may not only be rebutted by the evidence of other witnesses, but the court may in this case also, from a consideration of all the circumstances of the case, and of the facts and circumstances which the attesting witnesses themselves state, come to the conclusion either that they are not to be credited or that their recollection fails them: and so the Will may be admitted to probate in spite of their testimony."

Here if Mr. Jumi's testimony is to be accepted, then the second Will of the testator was not properly executed. He the attesting witness did not know the testator. He did not see the testator sign the second

Will. The other attesting witness was not present with him Jumi, when the testator signed.

The law is that the signature of the testator must be made or acknowledged in the presence of two witnesses and the witnesses must attest and subscribe the Will in the presence of the testator.

The testators' signature must be made or acknowledged when both the attesting witnesses are actually present at the same time and both witnesses must attest and subscribe after the testators' signature has been so made or acknowledged.

It is not essential for the attesting witnesses to sign in the presence of each other although it is usual to do so. Each witness must be able to say with truth that he has seen the testator sign the document though it is not necessary that he should know that it is the testator's Will.

There is no sufficient acknowledgment unless the witness either saw or had the opportunity of seeing the signature.

Attestation is in the presence of the testator if he might have seen the witness sign had he chosen to look. See Halsbury Laws Volume 39 p.880.

The effect of Mr. Jumi's testimony is that he denies due execution of the Will. In those circumstances the court is entitled to admit other evidence. The evidence in this case was that of Mr. Woodhouse an attorney-at-Law of some 28 years standing and a former member of the Parliament of Jamaica who gave evidence that he drafted the second Will of the testator at the request of the testator who was introduced to him for that purpose by Mr. Jumi on the 22nd of May 1978. On his, Mr. Woodhouse's instructions the testator returned to his office three days later on the 25th May 1978 to examine the first draft. On this occasion he was also accompanied by Mr. Jumi. On the 29th May 1978 the testator again returned to his office with Mr. Jumi and the Will was shown to him and he Mr. Woodhouse went through it clause by clause with the testator who said he was satisfied. He said

Mr. Jumi was present. He said the testator duly executed the second Will in the presence of Lee, Jumi and himself. After the testator signed, Jumi and Lee then signed in that order attesting the due execution of the (second) Will by the testator. The original was handed to Jumi and a carbon copy which was also executed, returned to his file. Jumi also signed that copy.

Mr. Woodhouse's version of what took place and that of Mr. Jumi are sharply conflicting.

Mr. Jumi says he never knew the testator, Mr. Woodhouse said it was Jumi who introduced the testator to him so that he could draft the testator's Will and that Jumi accompanied the testator to his office, three times within a matter of days for that purpose. Jumi admitted that the signature on the second Will as a witness, was his and that he signed it with a pen handed to him by Mr. Woodhouse but he did not know what the document was. In other words he was pleading "non est factum". It is not his deed. The attitude of the courts to that plea is shown in GALLIE V LEE (H.L.) 3 W.L.R. 1970 where it was held that this plea is rarely available to a person of full age and competent understanding who signs a document having legal effect without taking the trouble to read it. In GALLIE V LEE at p. 1082 Lord Reid said:

"The plea cannot be available to anyone who was content to sign without taking the trouble to try to find out at least the general effect of the document. Many people do frequently sign documents put before them for signature by their solicitor or other trusted advisers without making any inquiry as to their purpose or effect. But the essence of the plea non est factum is that the person signing believed that the document he signed had one character or one effect whereas in fact its character or effect was quite different. He could not have such a belief unless he had taken steps or been given information which gave him some grounds for his belief."

The evidence shows that Jumi is a businessman of some substance and at the relevant time had been a client of Mr. Woodhouse for some years and he had consulted Mr. Woodhouse from time to time on company matters connected with his tenants.

There is no evidence to support his contention that the document he signed was anything other than what it was viz a Will. But even if he had signed it knowing it to be a Will but the other factors for due execution and attestation were lacking, then the Will would not have been properly executed and could not be admitted to probate.

His admission that he did not know what he was signing suggests a certain amount of carelessness on his part at the relevant time. The evidence which he is asking the court to accept was given nearly eleven years after the execution of the second Will and the question the court must answer is how much reliance can be placed on that evidence as against that given by Mr. Woodhouse.

A person by the name of Albert Williams was called by the plaintiff. Mr. Williams stated that he is the "full brother" of Mr. Charles Ramsahai but he bears the English name and Mr. Ramsahai bears the Indian name. He said Mr. Woodhouse prepared a Will for him, the execution of which was attested by Mr. Woodhouse as a witness on the 30th May 1978. Mr. Woodhouse, who it was not disputed, had a very busy practice did not recall knowing Mr. Williams or attesting his Will but he said if he saw the Will he would recognise his signature. Shown the Will he promptly admitted that it was his signature. It is not clear what was the relevance of calling this witness.

The court was left to decide whose version of what took place 11 years ago it should accept.

Observing the witnesses and the manner in which they answered questions put to them and bearing in mind the passage of time and the presumption that *Omnia Praesumuntur rite esse acta*, and taking into account any admissions which could lead to an inference of carelessness or unreliability as to the witnesses' testimony, on a balance of probabilities I hold that Mr. Woodhouse version concerning the signature and attestation of the second Will is a more acceptable and reliable one than that of Mr. Jumi.

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executed and is valid.

Costs to be borne by the Estate on a solicitor and client basis for plaintiff and defendant.