IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY

BETWEEN	LOUISE WILLIAMS	APPLICANT
AND	STEPHEN MAVAOU	
AND	ELAINE BARBARA WILLIAMS (Executors of the estate John Basil Williams dec'd)	RESPONDENTS

IN THE MATTER OF JOHN BASIL WILLIAMS Late of 3 Hellshire Drive, Independence City in the Parish of St. Catherine, Deceased, Testate.

IN THE MATTER OF AN APPLICATION BY LOUISE WILLIAMS UNDER THE INHERITANCE(PROVISIONS FOR FAMILY AND DEPENDENTS ACT)

Miss Judith M. Clarke for Applicant
Miss V. Grant instructed by H.G Bartholomew and Co. for Respondents

IN CHAMBERS

Heard : February 9, 10, 15; May 17, 2000

HARRISON J
On February 15th, 2000 I completed hearing the evidence in this matter and reserved judgment. I was unable to hand down the judgment before so, I apologise for the delay.

Introduction
Prior to the coming into operation of the Inheritance (Provisions for the Family and Dependants) Act in 1993(hereinafter referred to as the Act), the position in Jamaica was that the courts did not have the power to vary or disturb testamentary dispositions or succession rights on testacy and therefore a member of the family of the deceased or a person who was dependent upon him, who is unprovided for, was left without a remedy in law. The Act now makes provision for a court to make orders on application for reasonable financial provision to be made for maintenance of the family and dependants of a deceased person out of the estate of that person where the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for his family and dependants.

The Application

Louise Williams, the applicant in this matter, has alleged that her late husband, John Basil Williams, made no provision for her in his will dated 14th June 1995 and which was probated on the 9th September, 1997. She therefore seeks an order under section 4 of the Act that the deceased failed to make reasonable financial provision for her maintenance. The will contains the following clauses:

> "I give devise and bequeath property situated at 3 Hellshire Drive, Independence City Saint Catherine to my uncle Stephen Westley Mavour and my daughter Barbara Elaine Williams to be held as Joint Tenants.
>
> The rest and residue and remainder of my estate both real and personal whatsoever and wheresoever situated I give and bequeath to Stephen Westley Mavour and Elaine Barbara Williams in equal shares."

THE AFFIDAVIT EVIDENCE

The facts are set out in several affidavits and I have summarized them as best as I can.

The Applicant

The applicant has stated inter alia, in her affidavit sworn to on the 5th January, 1998, that the deceased and herself had been married for twenty-four years and had been living together prior to their marriage in 1972. After some fourteen years of marriage they adopted a child, Christopher Williams. (Elaine Barbara Williams, the second-named respondent is the daughter of the deceased but not of the marriage).

The applicant further deposed that in 1973 the deceased and herself purchased property at 3 Hellshire Drive, Independence City in the Parish of St. Catherine which is registered at Volume 1097 Folio 358 of the Register Book of Titles. Her name was not placed on the title but she states that the deceased had assured her that as his wife she had nothing to worry about because her interest in the property was secure. She has also stated that he told her that he had nobody else to come for anything and she was the only person he had. Upon his death she discovered however, that her husband had done nothing to secure her interest in the property.

The property is the only asset of the deceased exhibited in the Inventory for the Probate application. She also said that at the time of his death he held a saving's account at the Bank of Nova Scotia, Victoria Avenue Branch and to the best of her knowledge that account had a balance of over Three Hundred Thousand Dollars ($300,000.00) prior to his death. She states that it was through their joint efforts and throughout their marriage that they pooled their resources to maintain and improve the said property at Hellshire Drive. They had added two (2) bedrooms, a bathroom and an additional kitchen from which they both operated a

small grocery shop on the property. She would work the shop whilst the deceased went out to do work as a driver and they would use the proceeds of the earnings from the shop to improve the property, maintain themselves and young Christopher. Save for a small income which she derives from the rental of a portion of the property, she has no other source of income or support for herself and the child. She is approximately fifty-three years of age and due to hypertension she has to visit the Doctor regularly on account of this condition. She contends that they had for the most part "a reasonably good marriage and had supported each other financially and morally."

Stephen Mavou

Stephen Mavou is a builder by occupation and is the first respondent. He is one of the Executors and beneficiaries under the will of the deceased. He has deposed that the deceased was his nephew and that he had used money he received for compensation arising from injuries he received, to purchase the property. He said that the deceased had advised him that he had used his money to carry out additions to the house at Hellshire Drive.

He has also deposed that during the marriage and in particular during the last ten (10) years of the life of the deceased, the relationship between the applicant and the deceased was "extremely bad". The deceased had complained to him that the applicant had mistreated him and at some point in time of the relationship she had ceased cooking and carrying out other domestic duties for him. This he said, resulted in the deceased leaving the matrimonial bed-room. He also deposed that just before the death of the deceased, the deceased had removed from the matrimonial home and rented accommodation for himself. In addition he had also squatted and built a single-room dwelling house on a parcel of land along the Dyke Road in Portmore, St. Catherine. In 1995 the applicant had taken the deceased before the Resident Magistrate's Court for maintenance but that case was adjourned sine die.

As to the making of the will he has stated:

> "25.That in or about the month of June 1995, the Applicant asked me to accompany him to Spanish Town, in the Parish of Saint Catherine and he directed me to the offices of Messrs. H.G Bartholomew & Company where he advised me that he wished to make a will in which he wanted to make provision for his only daughter ELAINE BARBARA WILLIAMS as he was of the view that if he did not do so, only the applicant would obtain the benefit from his house in Independence City.
>
> 25(sic).That he advised me that he would also make me a beneficiary under his Will and that I would be appointed a Executor of same as he trusted me to ensure that his daughter's interest under the said will would be protected."

Barbara Williams

Barbara Williams in her affidavit of the 15th April 1998 has stated that she is the only natural child of the deceased. She is a businesswoman and resides at 1 Homestead Drive, Port Maria, St. Mary. She has also stated that in late 1974 and until 1976, she had lived with the deceased and the applicant at 3 Hellshire Drive. During this period, she did not see the applicant cook for the deceased. She went to live with a grandmother in St. Mary since 1976. According to her, she would visit her father during the summer holidays and was a witness to several quarrels between the applicant and the deceased which would become violent and each other threatening to kill the other. She recalls that during 1996, the deceased began spending as much as two weeks out of every month at the grandmother's home in St. Mary and he would tell her he could no longer take the treatment being meted out to him by the applicant.

She has further stated that on the 16th day of June, 1995, the deceased took her to the Bank of Nova Scotia, Victoria Avenue Branch where he closed the joint account with himself and the applicant. He used the sum of $195,296.28 to re-open an account in both of them names. She had not withdrawn any sums from this account but when she received the pass book from the deceased's cousin Norma, the account had only $78,930.56 to its credit. This sum was used to meet the funeral expenses for the deceased. She finally deposed that she had advised the applicant as to the date and time of the deceased's funeral but she never attended it.

Marcus Kamtha

Marcus John Kamtha has sworn in his affidavit of the 16th April, 1998 that he is a neighbour of the applicant. He has known the deceased and applicant since 1972.There was constant quarrelling and bickering between the deceased and the applicant and the deceased often times complained to him that the applicant did not treat him well. He said she had refused to cook for him and wash his clothes. Kamtha said that due to the several and frequent quarrels between the applicant and the deceased, he formed the impression that they were not happily married.

Keith Thompson

Keith Thompson has sworn that he was well acquainted with the deceased and that he worked as a mason during the 1960's. He recalls that after an accident, the deceased had ceased working with his former employer and that he had been compensated for injuries he had received. He was informed by the deceased that he had used a portion of the compensation to pay down on a house in Marverley, St. Andrew but due to the fact that the vendors were taking too long to complete he had deposited on the house in Independence City, St. Catherine.

Issued joined

The applicant joined issue with several of the allegations raised in the affidavits in response. She deposed that it was not true as alleged by Marcus Kamtha that her late husband and herself were always quarrelling and, in fact they had no more domestic disputes than Mr. Kamtha had with his own wife. As to the complaints to Mr. Kamtha she said:

"5 That it is inconceivable that my late husband would have made any complaints to Mr. Kamtha as the deceased ceased all communication with him since the 1980's to the time of his death after he reported us to the authorities with a view to having our shop closed."

The applicant contends that Stephen Mavour and the deceased were not related. With respect to the alleged bad relationship between the deceased and herself she states:

> "9 ....I repeat that the deceased and I were married for twenty-four years up to the time of his death, having previously lived together as man and wife since 1966. We bought the house in 1973. We lived and cohabited as man and wife for a total of thirty years. Further the deceased and I had our marital problems ranging in seriousness from time to time but indeed we had greater discomforts in the last nine or ten years of our marriage as when my said husband started taking Christopher out and showing him his relatives and friends(when the child was about one year old), Mr. Mavour, and some of the deceased's other friends and relatives objected to the adoption of our child Christopher claiming that the deceased ought not to have taken a stranger's child (whom they referred to as "government pickney") to enjoy the fruits of his labour when he already had a family and the people who raised him. Although he loved Christopher dearly, the deceased would often give deep thoughts to the views of these persons and express his misgivings, sometimes vehemently. This would result in unpleasant arguments and periods of discomfort between us."

She maintained that the deceased was not in the habit of staying over-night at friends' homes and for most of their years together he had a drinking problem. He would often come home late at night or in the early hours of the morning in an intoxicated state. She continued to cook and wash for him even up to the time of his death and on occasions when there was a strain on the marriage they slept in the same bed for the most part.

In relation to squatting on the piece of land along the Dyke Road she said this:

> "13.....In the year prior to his death my husband squatted on a piece of land on the Dyke Road and put up a zinc shed there as he claimed that he had heard that the lands in that area were about to be allocated to the squatters thereon and he desired to acquire the lot on which he had

placed the shed. He never slept there as it was unsafe to do so. Further, it is inconceivable and untruthful that my husband would have rented a house and lived in it as alleged.....In any event our matrimonial home consists of four bedrooms, two bathrooms, two kitchens, a living and dining room and has a shop attached to it. In the worst of times my husband and I had ample space to allow us to avoid each other if we so desired.

14. That I verily believe that the so-called rent receipts exhibited herewith are not genuine reflections of payments for rent and have been deliberately fabricated in an effort by the respondents and their friends to undermine my claim.Mr. Pinnock, the alleged maker of the receipts is known to me as Mr. Mavour's former employer. Mr. Pinnock is a contractor and sometimes employs Mr.Mavour. During the 1960's my deceased husband also worked for him from time to time".

She maintains that although her husband had an accident and was certified disabled he did not cease to work.

As to the purchase of the house she said:

"16 the deceased did not put all his said money towards the purchase of the house and in any event, after same was purchased we, by our joint efforts made extensive improvements thereto. The property was insured in our joint names...more than ten years."

Regarding her application for maintenance she stated:

"18. That in 1985 I sued the defendant for maintenance as when our adopted son was about nine years old the deceased came to me and told me that he had located a person who would take our said son back to a children's home. I became angry and in response told him that if anyone was to leave it would not be our son. Thereupon he directed that I should cease operating the shop and leave with the child. As I had then purposed in my heart to leave for the well-being of Christopher, I sued him for maintenance because I could not the (sic) envisage how we (the child and I) would survive without the income from the shop. During 1995 to 1996 we had the most trying times of our marriage.

19 That despite an interim order which was made by the court, I have never received maintenance from the deceased pursuant to the said suit or at all and I did not pursue my claim or seek to enforce the interim order as things calmed down between us and I continued to operate the shop".

In relation to the making of the Will she stated:

"20 That I am unable to verify or deny paragraphs 25 and 26 of Mr. Mavou's affidavit but verily believe that the deceased may have submitted to pressure from his relatives and Mr. Mavour and at the time of making the Will, may have been affected by the serious marital difficulties which we were experiencing."

The applicant has stated that Elaine Williams lived with them for a few months when she about seven years old. She would spend occasional holidays with them and she would take care of her as if she were her own child.

She further stated that the deceased and herself had operated a joint account at the bank and that they had conducted their financial affairs jointly. She also deposed that she would give the deceased the earnings from the shop to lodge in this account.

SUBMISSIONS

Miss Clarke submitted that despite the difficulties which the deceased and his wife encountered, the marriage lasted up to the time of the husband's death. She asked the court to carefully consider the affidavits that spoke of how the marriage went and submitted that the Court should find as follows on the disputed facts:

1. The parties' marital difficulties were never such as to lead them to live separate and apart from each other.
2. The Court should prefer the evidence of the applicant over Elaine Williams as to the state of the marriage in 1970 and beyond, if only for the fact that (a) in the period 1974-76 Elaine was a little child and (b) the information she gleaned in her adult life was according to her based on what the deceased told her.
3. The Court should accept on a balance of probabilities the factual account as given by the applicant.

In relation to the type of order the court should make, Miss Clarke submitted as follows:

1. The financial resources and financial needs of the parties: The respondents had not presented to the court any evidence in respect of the financial needs and financial resources which the applicant has or is likely to have in the foreseeable future. The evidence revealed however, that the beneficiaries were builder and businesswoman respectively. The applicant on the other hand was a mere housewife.
2. The deceased's reasons, so far as they are ascertainable, for making provision or not making provision...: The allegations of not treating the husband well, were not sustained. The Court should ask itself the question, "even if their marital relations were volatile and strained as alleged, would this be a sufficient reason to justify a finding that the deceased's reasons were such as to justify the exclusion of the applicant from the will"? The court should look at the length of the marriage, their

adopted child, the fact that the plaintiff operates a shop at home and from which they had pooled their funds, their joint bank account up to 1995 and that up to 1995 they were insuring the property in their joint names.

3. The relationship of the applicant to the deceased and the nature of any provision: The parties were married for upwards of thirty (30) years and they lived off the property for support. There was neutral provision for each other from their ownership and use of the matrimonial home and that was how the deceased had provided for his family. The applicant said that she had contributed to the acquisition and upkeep of the home and when all the factors are taken together and weighed ,the court should find firstly, that it was unreasonable for the deceased to have entirely excluded his wife from any benefit under his will. Secondly, it would not be unreasonable for the Court to order that the net estate be transferred and vested in the applicant. Thirdly, where testamentary freedom is to be preserved in making the findings in 1 and 2 above, the balance of justice in favour of the applicant far outweighs any serious or potential set back to the beneficiaries.

She relied upon the cases of Rajabally v Rajabally and Ors. (1987) 2 Family Law Report 390 and Franklyn v Biddy (1962) 2 W.I.R 346.

Miss Grant submitted on the other hand that :

1. The Act confined itself to maintenance.
2. There was no tangible evidence as to the applicant's role in the acquisition of the property.
3. She failed to give a detailed account as to what her needs were and there was no medical evidence to support her contention that she was hypertensive. In the circumstances, the Court had nothing to guide it, in order to determine what would be reasonable maintenance.
4. The Court should look at the conduct of the applicant towards the deceased since this could be a basis on which he excluded her as a beneficiary under the will.
5. Since there was no evidence from the applicant what her needs were the Court could consider transferring a portion of the net estate to her rather than the entire net estate.

FINDINGS

I turn firstly, to the evidence presented. The deponents were not cross-examined upon their respective affidavits so, all I am left to consider is the affidavit evidence filed in the matter. The following are my findings of facts:

1. The deceased and the applicant were married for approximately twenty-four (24) years at the time of her husband's death.

2. In 1973 a house was bought at 3 Hellshire Drive, Independence City, St. Catherine, in the deceased's name and which was used as the matrimonial home.

3. At the time of purchase the deceased had assured the applicant that she had nothing to "worry about" as her interest in the property was secured.

4. They had pooled their funds and resources to maintain and improve the property and major extensions were done to the house. A second kitchen which was constructed was used as a shop which the applicant operated.

5. After fourteen (14) years into the marriage they adopted a child, Christopher Williams but friends and relatives including Stephen Mavaou were critical of the adoption.

6 In 1995, the applicant brought maintenance proceedings against the deceased, received an interim order but she did not pursue her claim or seek to enforce the interim order because according to her things calmed down between them and she continued to operate the shop.

7.The applicant and the deceased had marital difficulties but this did not cause them to live separate and apart from each other.

8. The deceased had a drinking problem and would often times come home in a drunken state nevertheless, the applicant continued to cook and wash for him.

9.I reject the evidence of Stephen Mavaou that the deceased had removed from the matrimonial home and rented accommodation for himself. I also reject his evidence that the deceased had squatted on land and built a single-room dwelling house thereon. I prefer and accept the applicant's evidence that he had squatted on the land since he had desired to acquire the lot by making a claim on the relevant authorities.

10. I reject the evidence of Barbara Williams as to the state of the marriage in 1970 and beyond and agree with Miss Clarke's submission that (a) in the period 1974 – 1976 she was a little child and (b) the information she gleaned in her adult years was based upon what the deceased told her.

11. I also reject the evidence of Marcus Kamtha. I prefer and accept what the applicant said that it would be most unlikely for her husband to have complained to him since he had reported them to the authorities about the operation of the shop on the premises and all communications had ceased between them up to the time of the husband's death.

12.The property at Hellshire Drive is the only asset of the deceased as the savings account at the Bank of Nova Scotia seems to be depleted.

13. The respondents who are the beneficiaries under the will are builder and businesswoman respectively, whereas, the applicant is a housewife and derives a small income from rental of a small portion of the property.

14. The applicant is approximately 53 years of age and suffers from hypertension.

The Law

I turn now to consider the relevant law.

In deciding what is reasonable provision, the court faces a two-stage process, first to determine the reasonableness of the provision actually made (if any), and secondly to determine the extent to which the court should exercise its powers. The first is a question of fact or value judgment, whereas the second is a question of discretion. In exercising the discretion conferred by section 4 of the Act, I am therefore obliged to consider all the relevant circumstances and also to have regard to the intentions of the testator.

Now, Section 4 of the Jamaican Act so far as is relevant to this application provides:

"4. (1) An application for an order under section 6 may be made by any of the persons referred to in subsection (2) on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the maintenance of the applicant. [Emphasis supplied]

(2) The persons to whom subsection (1) applies are-

(a) the wife or husband of the deceased...."

Section 7 of the Act provides that in determining whether and in what manner it shall exercise its powers under section 6, it shall have regard to the following matters-

(a) the size and nature of the net estate of the deceased;

(b) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any other applicant for an order under section 6 has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 6 or towards any beneficiary of the estate of the deceased;

(e) any physical or mental disability of any applicant for an order under section 6 or any beneficiary of the estate of the deceased;

(f) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(g) the deceased's reasons, so far as they are ascertainable, for making provision or for not making provision or for not making adequate provision, as the case may be, for any person by his will;

(h) the conduct of the applicant towards the deceased;

(i) the relationship of the applicant to the deceased and the nature of any provision for the applicant which was made by the deceased during his lifetime;

(j) any other matter which, in the circumstances of the case, the court may consider relevant.

The English Inheritance (Provision for Family and Dependants) Act 1975 allows a claim to be made by a wife or husband of the deceased, a child of the deceased, or a person who was being maintained by the deceased. The application is made 'on the ground that the disposition of the deceased's estate effected by his will ... is not such as to make reasonable financial provision for the applicant' (s 1(1)). (Emphasis supplied)

Reasonable financial provision is defined in the English Act and section 2 of that Act enables the court to make orders in different forms which includes orders for periodical payments, for payment of a lump sum, for transfer of property, and so on. By s 3(1), the court is required to have regard, both in deciding whether the will makes reasonable provision, and in deciding how to exercise its powers, to have regard to:

'... (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future ... (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future; (d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the\b 686\b0 deceased ... (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.'

Browne-Wilkinson J in Re Dennis (dec'd) [1981] 2 All ER 140 at 145-146, said:

'... "maintenance" connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance.'

In Re Coventry (decd) [1979] 2 All ER 408 at 418, [1980] Ch 461 at 474-475 Oliver J stated that the 1975 Act was not intended to interfere with the principle that-

'an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases ... In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant and that means, in the case of an applicant other than a spouse, for that applicant's maintenance.'

Oliver J also said that it was not enough to show that the applicant was in necessitous circumstances ([1979] 2 All ER 408 at 418, [1980] Ch 461 at 475) He said:

'There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made.'

In the Court of Appeal, Goff LJ referred to cases under the previous legislation dealing with the meaning of maintenance. In particular, he quoted from Re Duranceau [1952] 3 DLR 714 at 720, where the concept is expressed in the form of a question:

"Is the provision sufficient to enable the dependent to live neither luxuriously nor miserably, but decently and comfortably according to his or her station in life?" (See [1979] 3 All ER 815 at 819, [1980] Ch 461 at 485.)

In Trinidad and Tobago, section 90(1) of the Wills and Probate Ordinance, deals with the application for reasonable provision for maintenance. It states as follows:

" Where.....a person dies domiciled in the colony leaving a wife.....and leaving a will, then if the court on application by or on behalf of any such wife.....(thereinafter referred to as a dependant of the testator) is of opinion that the will does nor make reasonable provision for the maintenance of the dependant, the court may order that such reasonable provision as the court thinks fit, shall subject to such conditions or restrictions if any, as the court may impose, be made out of the testator's net estate for the maintenance of that dependant." (Emphasis supplied)

Subsections 6 and 7 enjoins the court, when exercising its discretion, to have regard : 1) to any past present or future capital or income of the dependant applying, (2) to the conduct of that dependant in relation to the testator or otherwise; (3) to any other matter or thing which in the circumstances of the case, the court may consider relevant or material in relation to that dependant, to the beneficiaries under the will or otherwise; and (4) to the testator's reasons, so far as ascertainable, for making the dispositions made by his will, or for not making any provision, as the case may be, for a dependant.

Franklyn v Biddy (1960) 2 WIR 346 which was decided by the Supreme Court of Trinidad and Tobago in June 1960 discloses the following facts:

The testator was married in 1937 to the plaintiff who left the matrimonial home in June 1944, taking away all the furniture and other articles therefrom. In February 1947, the defendant became the mistress of the testator and so remained until his death on June 22, 1956. After appointing the defendant the sole executrix of his will made in October 1947, the testator devised and bequeathed all his real and personal estate to the defendant, save and except the sums of $150 and $25 which he bequeathed to his sister and the plaintiff respectively.

The plaintiff applied for an order that reasonable provision be made out of the testator's estate for her maintenance alleging inter alia, that she was at all material times during his lifetime dependent on him for her support and maintenance.

In clause 4 of his will the testator declared that from June 1944, he had been separated from his wife whose whereabouts were then unknown to him, and further declared that she was not to benefit under his estate at all except for the sum of $25 bequeathed to her. Oral and written statements of the testator showed that the plaintiff had deserted him in June 1944. The plaintiff denied the desertion and alleged that she and the testator had separated from each other by mutual consent.

Held:

a) Oral statements of the testator were admissible to ascertain the testator's reasons for his dispositions under section 90 of the Wills and Probate Ordinance, Trinidad and Tobago, even though they were not in writing and might not strictly be evidence which was admissible in a court of law. See Re Vint v Swain [1940] 3 All E.R 470.

b) A testator's dispositions should not be disturbed unless it was found that it was unreasonable for the testator to make provision for the dependant applying or that it was unreasonable for him not to make a larger provision. Further, interference with a testator's will was not to be governed by the personal inclination of the judge, if he were the testator, but rather by what a just and wise testator ought to have done in all the circumstances of the case. Re Styler v Griffith [1942] 2 All E.R 201 applied.

c) Included in the relevant factors to be considered by the court in exercising its discretion to interfere with the testator's dispositions is the consideration of his moral as well as his legal obligations. Re Andrews and Anor v Smorfitt[1955] 3 All E.R 248.

d) The plaintiff deserted the testator for good in June, 1944 and had not shown any or any sufficient reason for the court to exercise its discretion to disturb or vary the testator's disposition.

In the English case of Rajabally v Rajabally and Others [1987] 2 FLR 390 the deceased was survived by his widow and two sons and a son by a first marriage. He left his estate consisting of the former matrimonial home to his widow and three children in equal quarter shares. After the deceased health had failed him, the household was largely maintained by the widow who went out to work. After his death she continued to live in the house with her two sons. The eldest son, who suffered from a mental illness which severely affected his work prospects, lived on social security in a council flat where he had security of tenure. The widow made a claim under the English Inheritance (Provision for Family and Dependants) Act 1975. She made a claim effectively for the whole estate under the above provisions. The trial judge had accepted assurances from the two younger sons that they would not insist on their rights under the will, and from the eldest son that he was prepared to take provision under the will by being bought out at valuation and would not require a sale of the property. In the light of those assurances the judge found that the widow's earnings plus her pension and the contribution made by one of the sons would enable her to maintain the household and service a loan with which to buy out the one-quarter share of the house. Accordingly, he held that the will did make reasonable provision for the widow and dismissed her claim. The widow appealed.

Held:
a) As a precondition to the making of an order under section 2 of the 1975 Act the court must decide that the will did not make reasonable provision for the

applicant, having regard to the facts as known to the court at the date of the hearing. However, it was not permissible to base a conclusion as to reasonable provision on legally unenforceable assurances given at that time by various parties that they would not insist on their legal rights under the will. The court was concerned to establish what legal rights had been given by the will. The will did not make reasonable financial provision because by giving the widow only a quarter share in the former matrimonial home, she had no security in it, although she had contributed to its maintenance not only by her labour but also by substantial financial contribution from her earnings.

b) The widow should be provided with real security in the house but account had to be taken of the limited means, very uncertain future and limited chances of employment of the eldest son. In the circumstances, reasonable financial provision would be made for the widow by vesting the house in her absolutely, subject to a legacy in favour of the eldest son to be raised by a mortgage on the estate.

Conclusion

Guided by the principles from the cases reviewed, as well as the principle that the jurisdiction to interfere with a testator's disposition should be exercised with great circumspection, I have come to the conclusion that the testator's disposition in his will has produced an unreasonable result. He has failed to make reasonable financial provision for his wife's maintenance.

What should the Court do in these circumstances? Section 7 of the Act (supra) sets out a number of factors for the Court's consideration when it comes to exercise its discretion.

I bear in mind that the property at 3 Hellshire Drive is the only asset in the estate and it is registered in the sole name of the testator. This is the location where the deceased and the applicant lived up to the time of his death. There is substantial improvement to the property as a result of their pooling of funds and resources. The applicant would certainly have acted to her detriment and would have been entitled to a beneficial interest in the matrimonial property.

With respect to the financial resources and needs of the parties, the evidence shows that the applicant is economically less off than the two beneficiaries. The beneficiaries are builder and businesswoman respectively, whereas the applicant is a housewife who depends solely on the rental from a portion of the premises in order to maintain herself and the child, Christopher. The joint bank account of the deceased husband and herself has been exhausted.

It was not a marriage without difficulties but it seemed to have survived for twenty-four (24) years and up to the time of his death.

The Court also has to bear in mind, if ascertainable, the deceased's reason for not making any provision for the applicant. The case of Franklyn v Biddy (supra) establishes that the statements of the testator are admissible even though they are not in writing. In this regard, the statement attributed to the deceased by the beneficiary Mavaou ought to be considered. This statement must be examined in light of the deceased's disposition in his will. Mavaou deposed that the deceased told him that he wanted to make provision in his will for his only daughter because, " if he did not do so only the applicant would obtain the benefit of his house in Independence City". He further deposed that the deceased had named him as an Executor in order to ensure that his daughter's interest under the will was protected. It seems to me therefore that the disposition in the will does not reflect the intention he had expressed to Mavaour. The statement by the deceased in my view, could be interpreted to mean that he wished to give his daughter a share in his estate and he wanted Mavaour to ensure that her interest was protected.

Counsel for the applicant had submitted that it would not be unreasonable for the Court to order that the net estate be transferred and vested in the applicant because when all the factors are taken into consideration, the "balance of justice in favour of the applicant far outweighs any serious or potential set back to the beneficiaries". Counsel for the defendants submitted on the other hand, that since there was no evidence from the applicant as to what her needs were, the Court could consider transferring a portion of the net estate to her rather than the entire net estate.

My task now, is to determine the extent of the financial provision that should be made for the maintenance of the applicant. Section 6 of the Act empowers the Court to consider a number of orders. The section reads as follows:

> "6. (1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such, at the time of the hearing of the application, as to make reasonable financial provision for the maintenance of the applicant, make any one or more of the following orders-
>
> (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
>
> (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the setting up of a trust fund out of the net estate for the benefit of two or more applicants:

(e) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(f) an order for the acquisition, out of property comprised in that estate, of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit.

I accept the principle established in Franklyn v Biddy (supra) that interference with a testator's will should not be governed by the personal inclination of the judge, if he were the testator, but rather by what a just and wise testator ought to have done in all the circumstances of the case. It is my considered view however, when all the circumstances of this case are looked at, reasonable financial provision should be made for the applicant's maintenance which, according to Goff L.J in Re Coventry deceased, (supra) "will enable her to live neither luxuriously nor miserably, but decently and comfortably according to her station in life". The testator had also intended that his daughter and uncle, Stephen Mavaou benefit under the will so, they should also share in the estate. The Court therefore orders:

1.The net estate be divided between the parties as follows:

Applicant	70%
Elaine Barbara Williams	20%
Stephen Mavaou	10 %

2. The property known as 3 Hellshire Drive, Independence City, in the Parish of Saint Catherine registered at Vol. 1097 Folio 358 of the Register Book of Titles be sold and the net proceeds be divided in the proportions of 70% to the applicant, 20% to Elaine Barbara Williams, and 10% to Stephen Mavaou.

3.The sale and distribution of the proceeds of sale of the said property be postponed until the child of the marriage, Christopher Williams attains the age of eighteen (18) years and that the status quo otherwise remains until such time.

4. Liberty to apply.