[2017] **JMSC Civ 136**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 04550

IN THE ESTATE of **CARLOS ADRIAN GRIFFITH,** otherwise called **CARLOS ADRIAN GRIFFITHS,** late of 125 Molynes Road, Kingston 10, in the parish of St. Andrew, deceased, Testate (Probate)

BETWEEN	**PAUL GRIFFITH**	**CLAIMANT**
AND	**CLAUDE GRIFFITH**	**DEFENDANT**

IN OPEN COURT

Mr. Glenroy Mellish instructed by Glenroy Mellish & Co. for the Claimant

Mr. Germaine Smith instructed by Nigel Jones & Co. for the Defendant

December 3 and 4, 2015 and October 5, 2017

PROBATE – LAST WILL AND TESTAMENT – WHETHER SIGNATURE OF TESTATOR FORGED – BURDEN OF PROOF – EXPERT EVIDENCE - HANDWRITING EXPERT - REVOCATION OF PROBATE

Thompson-James, J

INTRODUCTION

[1] The issue in this case surrounds the authenticity of the signature on the document purported to be the Last Will and Testament of Carlos Adrian Griffith

(Exh. 3) (hereinafter referred to as "the deceased") who died October 21, 2002. The deceased was the father of both the Claimant and the Defendant who are brothers.

[2] Probate was granted in the Supreme Court of Judicature to the Defendant December 10, 2010 in respect of his estate, pursuant to the document purported to be the Last Will and Testament of the deceased dated May 5, 2002.

[3] January 25, 2012, the deceased's property at 152 Molynes Road, registered at Volume 731 Folio 18 of the Register Book of titles and comprised in Lot number 7 on the plan of 115 Molynes Road, was registered on transmission in the Defendant's name.

[4] May 8, 2012, the Defendant, in his capacity as executor of the estate of the deceased, filed a claim (Claim no. 2012 HCV05799) against his brother, Paul Griffith for recovery of an outstanding loan he believed was owing to the estate of his late father by his brother, the said Paul Griffith. The matter was resolved July 7, 2014 when the Hon. Justice Paulette Williams granted Summary Judgment for Paul Griffith, the then Defendant, now Claimant.

[5] August 16, 2012, the Claimant, Paul Griffith, filed this action by way of Fixed Date Claim Form against his brother Claude Griffith, seeking the following orders:

1. That this Honourable Court shall pronounce against the force and validity of the alleged last Will and Testament dated the 5th day of May, 2002 of the deceased, CARLOS ADRIAN GRIFFITH otherwise called CARLOS ADRIAN GRIFFITHS and declare the same null and void for reason that the alleged Will is a forgery, as the signature thereon is not that of the deceased, CARLOS ADRIAN GRIFFITH otherwise called CARLOS ADRIAN GRIFFITHS.

2. A declaration that the deceased CARLOS ADRIAN GRIFFITH otherwise called CARLOS ADRIAN GRIFFITHS died intestate and that his estate is to be distributed in accordance with the Intestates' Estates and Property Charges Act.

3. That the Probate granted to the Defendant by this Honourable Court on the 10th day of December, 2010 in the estate of CARLOS ADRIAN

GRIFFITH otherwise called CARLOS ADRIAN GRIFFITHS be revoked.

4. That the costs of this action be borne by the Defendant or, in the alternative, there be provision for the costs of this action to be taken out of the estate of the said deceased, CARLOS ADRIAN GRIFFITH otherwise called CARLOS ADRIAN GRIFFITHS.

5. That there be liberty to apply; and

6. That there be such further and other relief as this Honourable Court may deem just.

[6] The Particulars of Fraud were stated as follows:

a) The Defendant had or did have in his possession a document alleging to be the purported last Will and Testament of the deceased which he knew or ought to have known was not a genuine Will of the deceased.

b) The Defendant knew or ought to have known that the deceased did not make the purported Will nor authorize its making by or on his behalf.

c) The Defendant, in probating the purported Will, has fraudulently misrepresented to this Honourable Court and the beneficiaries of his estate, that the purported Will was in fact that of the deceased.

d) The Defendant perpetuated this fraud by his continued reliance on and utilization of the said Probate and purported Will to deal with the assets of the deceased in a manner prejudicial to the beneficiaries of his estate.

[7] The Claimant engaged the services of a forensic document examiner, Ms. Beverly Y. East, president of Strokes and Slants Handwriting Services, who examined and prepared a report dated June 10, 2012, on the question of whether Carlos Adrian Griffith signed the relevant Last Will and Testament. That report was admitted as an expert report by order of the Court September 20, 2013.

[8] Ms. East received and utilized the following documents for comparison purposes in her report:

1. Last Will and Testament of Carlos Adrian Griffith dated 5th May 2002 (labelled as "Q1" (exhibit "3");

2. Letter to the attention of Mr. Cowell Lyn prepared by C.A. Griffith, dated 4th December 1978 (labelled as "K1")

3. Application for renewal of Driver's Licence dated 5th May 1996 (labelled as "K2" (exhibit "2")

4. Police Report provided by Inland Revenue (labelled as "K3")

5. Repayment Schedule signed by Paul Griffith and Mr. C. A. Griffith (labelled as "K4")

[9] In explaining her method of examination in the report, she noted that the handwriting on each document was carefully examined for degree of slant, size of letters and words, space between letters and words, alignment and proportion, and individual letter forms were examined and compared. She also noted that each document was scanned and enlarged to a state of 140% and magnified at 10x150.

[10] In the report, Ms. East sets out her findings as to the main characteristics of the 'questioned document' as opposed to the main characteristics of each known document for comparison, and states her professional opinion as follows:

> *"Therefore after careful examination it is my professional opinion that Mr. Carlos Adrian Griffith* ***did not sign*** *document* ***Q1****. Last Will and Testament dated May 5th 2002.*
>
> *There are* ***seven*** *consistent characteristics in the known signatures of Mr. Carlos Adrian Griffith,* ***K1-K4****. These known characteristics comprise the master pattern of his signature. They are as follows:*
>
> 1. *Most telling are the eight initial upstrokes (highlighted in green also enlarged photos behind this report*

2. *The signature concaves in the middle of its formation*

3. *The elaborate size of the upper loop in the letter **G** formation*

4. *The double letter **f's** are equal in size*

5. *The letter **t** has a double stem*

6. *The letter **t** has very little evidence of a **t** bar*

7. *The letter **h** forms a round downward motion*

*There are **eleven** inconsistencies in the questioned signature which do not match the master pattern of the known signatures. They are as follows:*

"1. The signature sits on the line, which is always a red flag that a signature is forged as the writer does not need the line as a guide

2. *There are initial strokes below the base line which are not evident in any of the known signatures*

3. *The letters **C** and **A** and [sic] clearly identifiable*

4. *The formation of the upper loop in letter **G** is smaller in size and does not resemble any of the letter **G** formations in the known signatures*

5. *There is a pause and space before the double letter **f***

6. *The letters **f** are skeletal*

7. *The second letter **f** is higher than the first*

8. *The bar of the letter **f** continues across in an upward motion through the remaining letters*

9. *The letter **h** is angular*

10. *The entire signature is angular and has a 40 degree slant in its formation*

11. *The signature is not concave*

[11] By letter dated October 22, 2013 (exhibit 1A), the Defendant's attorney submitted questions to Ms. East in relation to her report pursuant to part 32 of the Civil

Procedure Rules, to which she responded by way of email dated November 18, 2013 (exhibit 1B). Since the answers to those questions for the most part can be found in the report itself as well as in her evidence in cross-examination (which is set out below), I will not set out those questions and responses here.

THE CLAIMANT'S CASE

[12] It is the Claimant's case that the signature on the purported Will is forged and is not the true signature of the deceased, Carlos Adrian Griffith. It is contended that the Will is 'an attempt to fraudulently dispose of the assets of the deceased in a manner that would be prejudicial to the interest of his beneficiaries on intestacy.

[13] The deceased died October 21, 2002, but it was not until the court documents in Claim HCV 05799 of 2012 were served on Claimant May 29, 2012, that he discovered the existence of the alleged Will.

[14] The Claimant submits that the evidence points strongly to a forged document and relies on:

1. the Claimant's own evidence that he was acquainted with the deceased's handwriting;

2. the expert report of Beverley East;

3. the observations and conclusions of the state of health of the deceased made by the Defendant and his witness.

[15] The Claimant relies on his own assertions in paragraph 9 of his witness statement that he is familiar and well acquainted with the manner and character of the deceased's handwriting, having frequently seen him write and sign his name to documents and therefore does not believe the signature on the Will is that of his father. He argues that this is unchallenged evidence that the Court can take account of.

[16] In relation to the expert report of Ms. East, the Claimant submits that the expert's findings support his contention that the signature is not that of the deceased, and highlights several aspects of her evidence in support of his case, including:

i. that from her experience it is unlikely that the signature of someone as sick as the deceased reportedly was would be so smooth and fluid;

ii. that the questioned signature does not have any of the characteristics that are evident in the signature of someone who is ill;

iii. that there is no evidence of shakiness in the signature, which is one of the symptoms she can identify in handwriting;

iv. the absence of concavity in the questioned signature in the Will, which was a feature in the known signatures;

v. that the signature on the Will sat perfectly on the existing line, which raises suspicion.

[17] In respect of the deceased's medical condition, the Claimant relies on the deceased's death certificate which notes, amongst others, a diagnosis of Creutz-feldt Jakob's disease, as well as the Defendant's evidence that since the testator was suffering from the symptoms of the disease that would have influenced the type of signature he made. He also highlights the Defendant's evidence that his father was shaky in his movements and could not see very well at times, was elderly and had poor eyesight. The Claimant intimates that the questioned signature does not show any signs of being affected by any of the symptoms described by the Defendant.

[18] The Claimant relies on the authority of *Cross on Evidence (*7th Ed.) pp. 490-491 and 498-499, as reproduced in *Watts v Watts Investments Limited*, Claim No. 2012 CD00090, for the proposition that the Court may consider evidence from a lay-person as to symptoms of illness affecting another person.

THE DEFENDANT'S CASE

[19] The Defendant's case is that the Will is valid and was duly executed according to the Wills Act. He, along with Carlos Griffith, were witnesses to the Will and can attest to its valid execution and the events immediately before it was executed, and any variation in the signature is attributable to the limitations of the sample size of the expert's report and the passage of time, as well as the deceased's age, eyesight, state of mind, mood and health condition.

[20] The Defendant asserts that, owing to his close relationship with the deceased, he was able to see the signature of the testator on official documents and can attest to the changes in this signature caused by the progression of age and illness. The Claimant is not well acquainted with the signature of the deceased and is relying on his memory of the deceased's signature from old documents.

[21] It is submitted that the comparative analysis of the expert witness should not be relied on as it is limited and inconclusive and does not take into account the various factors that influenced the signatures made on the earlier documents, as well as those influencing the signature on the Will. Further, the signatures used in the analysis were done years before the testator signed the Will.

[22] In relation to how the Court should approach the matter, it is submitted that where there is an allegation that a Will was not validly executed, the starting point for the Court is the presumption that the Will was validly executed, a presumption which can only be defeated by overwhelming and compelling evidence which shows otherwise. For this the Defendant relies on *Supple v Pender and another* [2007] EWHC 829 (Ch).

[23] In this regard, the Defendant submits that where an allegation of fraud is made the burden of proof lies with the person making it (Butterworths Wills Probate Administration Service Online Edition, Division G, chapter 4). The standard of proof required to sustain an allegation of forgery is the civil standard, as Probate

proceedings are civil proceedings (Halsbury Laws of England Online Edition, Volume 11, 5th Edition, paragraph 775).

[24] Further, based on the principle enunciated in *Vacianna v Herod* [2005] EWHC 711 (Ch), it is submitted that, the more serious the allegation, the more persuasive and convincing the evidence needs to be for that burden of proof to be discharged. The allegation is of a criminal nature under the Forgery Act, and forgery of a Will with intent to defraud under section 4 of the Act carries the stiff penalty of life imprisonment with hard labour. Notwithstanding that the standard of proof is the civil standard of on a balance of probabilities; the Court should require nothing more than compelling evidence and place a high degree on the quality of the evidence, while weighing the balance of probabilities. For this proposition the Defendant relies on *Fuller v Strom* [2000] All ER (D) 2392. The Defendant submits therefore, that the burden on the Claimant in this matter is extremely high, and the evidence used to ground the allegation must be cogent and of a sufficient quality before the burden can be discharged. In that regard, the Defendant submits that the Claimant's evidence falls way below this standard and should not be accepted by the Court as sufficient.

[25] In relation to the expert report, the Defendant submits that the conclusion of the expert in her report carries some weight, but by itself is not automatically acceptable over other relevant evidence. Also, the skill and knowledge of the expert should not be relied on without balancing it with other available evidence, as was done in *Supple v Pender*. He relies on *Fuller v Strom* in which the Court explained that the training of experts helps the Court to identify facts which a lay witness or a judge could not without expert help, but also cautioned that some expert evidence may amount to no more than the drawing of inferences from facts observable as much by the expert as by a lay witness, and the inferences to be drawn from those facts may be capable of being drawn as much by the expert as by a lay witness. It is submitted that the Court over time has balanced evidence presented by experts and has rejected such evidence where appropriate. The authorities show that the Court goes through a process of

examining all the circumstances surrounding the creation of the Will, including age, health, state of mind of the testator at the time of signing before deciding whether a signature was authentic. The Defendant relies on the case of *Clarke v. Beckford* et al JM 1993 CA 33 in which it is submitted that the Jamaican Court of Appeal outlined the difficulty with using expert evidence in matters such as this one and outlined the reason for accepting other evidence over that of the expert.

[26] The Defendant also cited the case of *Gregory and Montague v. Sollas* JM 2005 SC 111 in which the Court weighed all the circumstances and found that there is a possibility that one's signature could be different over time.

[27] In that regard, the Defendant submits that in the present case the deceased's signature has been in a constant state of variation, with possibly even further alterations due to the deceased's health. The Defendant also argues that although the evidence is that the deceased had been suffering from different ailments, these did not affect him at all times and he experienced periods of normality. In the same breath however, it is argued that if there is any variation in the deceased's signature, it should not be looked at suspiciously, but examined within this context. Here the Defendant relies on the judgment of *Montague v Willie* 2010 HCV 06406, wherein Batts J rejected the expert's evidence as to inconsistencies between the known signatures and the document alleged to be forged, and found that the handwriting was that of the testator.

[28] The Defendant submits that in the case at hand, the expert's report by itself is not conclusive that there was a forgery of the Will and significantly more evidence is required to rebut the presumption that the Will was validly executed. It is submitted that the report is limited in the methodology and material used to arrive at its conclusion, and there are admissions and inconsistencies which further discredit the report. The Defendant highlights the following as reasons why the Court should reject the report:

i. The sample size used to arrive at the master pattern and known signatures is too small and limited based on the age of the testator and

the types of documents that were used. Further, based on the deceased's age, a more accurate reflection of his true signature or a consistent pattern in his true signature, could have been determined by examining more signatures over the entire period of his lifetime, that is, if the samples were used from each decade of his adult life (30s, 40s, 50s and so on). These would have more accurately demonstrated the variations in his signature over the course of his life, it is submitted, rather than using 'random documents' prepared in 1978, 1996 and 1999, as was used by the expert. This, it is submitted is a serious limitation in the report that should not be ignored by the Court.

ii. Within the 'known signatures' there are already variations which are visible to the untrained eye that must lead to a rejection of the report by this Court. For example, the first inconsistency as identified by the expert is that the signature on the Will sits on a baseline which usually is an indication of forgery. It is submitted that the signature of the testator does not sit squarely on any baseline, and, the known signatures themselves do not sit on any baseline. It is submitted that in the sample letter dated December 4, 1978, attached as "K1" in the Claimant's Bundle of Documents, there is actually no baseline on which the signature could have been said to sit, as the testator signed into a blank space. This is also true of the sample application for a driver's licence renewal dated 1996, which was entered into evidence as "exhibit 2" and police report dated 2006. In fact, on the sample repayment schedule dated 1999 which is attached as "K4" in the Claimant's list of documents, the signature of the testator actually falls below the line provided.

iii. On the very same application for the driver's licence renewal dated 1996 (exhibit 2), there are three signatures from the testator, which to the naked and untrained eye are noticeably different. This, it is submitted, demonstrates a clear inconsistency in the pattern of the testator's signature despite the conclusion of the expert that there is a known

signature of the testator. Of interest is the fact that only one of these three signatures was used as a known signature in the expert's report, despite their obvious differences.

iv. In relation to the finding by the expert that the letter "h" is angular on the signature on the Will, it is submitted that the "h" is made differently on all the documents submitted for known signature, and on the same application for driver's licence renewal, it was made in three different ways.

v. In relation to the finding by the expert that the entire signature on the Will is angular and has a 40-degree slant, it is submitted that on the sample repayment schedule dated 1999 ("K4" in the Claimant's bundle of documents), the signature of the testator actually slants downwards in comparison to the other 'known signatures' and falls below the baseline.

[29] The Defendant proposes that these examples of weaknesses in the report demonstrate to the Court that the samples chosen were not sufficient to arrive at a conclusion that the testator had a consistent known signature, and that the testator's signature changed over time, and varied even when done three times on the same document (exhibit 2). The alleged inconsistencies therefore should only be seen as expected and accepted variations of the testator's signature given his age, state of mind and overall health. It is therefore submitted that the conclusion of the report has been tainted by its limitations and should not be relied on.

[30] The Defendant further submits that the viva voce evidence of the expert witness is also not of the required standard of proof necessary to successfully ground the claim. It is asserted that the admissions of Ms. East demonstrate that it has not been clearly established that the deceased had a clear, consistent and unchanging signature throughout his lifetime, that the sample she used to arrive at her conclusion was limited, and that she made omissions in arriving at her

conclusion about the signature of the testator. In this regard, the Defendant highlights and submits the following:

i. Ms. East admitted during cross-examination that there are always variations in signatures, and that signatures do change over the lifetime of individuals. She also admitted that the signatures of the testator found on the Application for Driver's Licence contained variations which were visible to the untrained eye. There were three signatures on this document, and Ms. East admitted she used only one of the three to form her conclusion. It is submitted that this admission takes away from the credit of the expert and her report.

ii. The expert's admission under cross-examination that signatures of individuals normally change over time, but subsequent disagreement with the suggestion that the signature of the testator were in a constant state of variation and changed over his lifetime has also taken away from the credit report. This evidence, it is submitted is conflicting, and even more glaring, when taking into account that "exhibit 2" has three signatures from the testator which are noticeably different.

iii. The expert's evidence in relation to a signature sitting on a line conflicts with her evidence on the same point given in her report as well as in her responses to the letter ("exhibit 1"). In Ms. East's report at page 4 she identifies as an inconsistency between the deceased's known signature and the signature on the Will that "the signature sits on the line, which is always a red flag that a signature is forged as the writer does not need the line as a guide." However, in her responses she admitted that "an authentic signature can sit on the line but normally does not…" and during cross-examination she stated that 'they would not be considered suspicious by her if she is able to identify a baseline. The Defendant submits that these

answers are inconsistent and conflicting and must not be viewed favourably by the Court.

iv. The expert's evidence in relation to the medical status of the testator has also taken away from her credit. Ms. East under cross-examination agreed that a doctor would be more competent to speak to the range of symptoms that would be presented by someone suffering from the diseases that were described, and also that a person suffering from mental and physical ailments could have moments of lucidity and could make a smooth signature, but disagreed that the deceased could have made the signature with such fluidity in this case. It is submitted that her view is unsupported by evidence and in the absence of medical evidence she is not in a position to state the extent of the ailments that may or may not have been affecting the deceased, how advanced or dormant the symptoms may be and therefore not in a position to determine whether he could have had periods of lucidity where he could make smooth signatures. The Defendant however, in the same breath argues that if the expert agreed that persons with ailments can have periods of lucidity, why then could the testator not also have periods of lucidity?

v. The expert is not in a position to discuss the possible effect of the symptoms of the ailments of the deceased and how they may or may not have affected his signature since neither the Defendant nor the Claimant has presented any medical evidence to this effect.

[31] In relation to the Claimant's evidence, the Defendant submits that the Claimant has failed to present sufficient evidence of the required quality to satisfy the burden of proof as outlined in *Fuller v Strom*. In that regard, it is submitted that the Claimant has not presented 'one shred of medical evidence' to show the state of mind or the health of the testator, nor has he presented any evidence to

indicate his observations of the testator including speech or mental faculties, the frequency of his interactions and conversations with the testator, or evidence of the nature of their relationship.

[32] It is submitted that, in the absence of any medical evidence, the Claimant has not presented any extrinsic evidence to support the assertion that the extent of the testator's illnesses affected him so badly that he was incapable of signing the Will.

[33] It is further submitted that the Claimant has been discredited as to the true nature of his interactions with the testator and his familiarity with his signature, in that, the Claimant under cross-examination initially asserted that he had lived with the testator for fifty (50) years, but later on admitted that this was not so, and that he lived overseas away from the testator for several years. The Claimant did not present any evidence to discredit the Defendant's evidence that he was favoured and trusted more by the testator who shared details of his private business only with him, nor did he dispute Carlos Alfonso Griffith's evidence that their father did not share his private business affairs with all the children. His only evidence is that he was no less favoured.

[34] The Defendant highlights the Claimant's agreement that even though the testator did not tell him he wrote a Will it was possible that he could have. He also points out the Claimant's evidence that he found it unusual that his father would leave everything to his mother in his Will, and submits that such is not unusual, in the normal course of successful marital relationships, and that the Claimant has not presented any evidence to show why such a disposition should be viewed as suspicious or unusual. Moreover, the Court would require more than mere suspicion to ground such a claim.

[35] The Defendant submits that the Claimant may have been mistaken or driven by some other motive about what he considered suspicious that led him to hire the expert. It is submitted that the Claimant's evidence as to how he became suspicious and hired the expert and why he chose the samples that he did,

indicates that the sample size has been tainted and was not random and objective, but very specific and deliberate based on the suspicion of the Claimant. The Defendant points out that, even though the Claimant gave evidence that he became suspicious upon seeing the signature on the Will because he was familiar with the signature of the testator, the Claimant accepted under cross-examination that his knowledge of his father's signature was limited to only those documents he saw as an adult and there could have been other documents signed by the testator that he did not see.

[36] It is submitted that the Claimant's disagreement that the deceased's signature changed over time and would be affected by any ailments suffered by him, conflicts irreconcilably with the Claimant's own position that the testator was ill and suffering from different ailments.

[37] Finally, the Defendant submits that, on a balance of probabilities, it is acceptable that the testator would dispose of his assets in the manner in which he did, and the evidence presented is insufficient to explain why this disposition would be adverse to the wishes of the testator. Further, it is submitted that the Defendant has received no personal benefit from the disposition and no evidence has been presented to demonstrate why it would be to his benefit. He asserts that the transfer of the deceased's property was done pursuant to the Defendant's duties as executor of the Will. He was not aware that he was to be named as executor until he was summoned to Jamaica by the testator for an 'urgent and private matter', and he had no interest to serve.

[38] It is concluded that the Claimant's claims are motivated solely by the action of the Defendant in filing the aforementioned suit to recover the debt he believed was owing to the estate of the deceased.

LAW & ANALYSIS

The Burden of Proof and the Standard of Proof

[39] To succeed on any issue, the party bearing the legal burden of proof must (1) satisfy a judge or jury of the likelihood of the truth in his case by adducing a greater weight of evidence than his opponent; and (2) adduce evidence sufficient to satisfy them to the required standard or degree of proof.

[40] In civil cases the standard of proof is satisfied on a balance of probabilities. It is said that even within this formula variations in subject matter or in allegations may affect the standard required. It has commonly been said that the more serious the allegation, for example fraud, the higher will be the required degree of proof. However, it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue but that the gravity of the issue becomes part of the circumstances which the Court has to take into consideration in deciding whether or not the burden of proof has been discharged. The more serious the allegation, the more cogent is the evidence required to overcome the likelihood of what is alleged and thus to prove it. **Halsbury's Laws of England/Civil Procedure (Volume II) (2009) 5th Edition paras 1 – 1108. Volume 12 (2009) 5th Edition paras 1109 – 1836/20**

[41] The right of a testator to dispose of his assets according to his wishes has long been recognized and honoured by the law, and once the provisions of the Wills Act have been satisfied, it places a burden on the person alleging that these were not complied with. (**Butterworks Wills Probate and Administration online Edition Division G. Chapter 4**).

[42] The balance of probability standard means that a court is satisfied an event occurred if the Court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the Court will have in mind as a factor to whatever extent is appropriate in the particular case that the more serious the allegation, the less likely it is and hence the stronger should

be the evidence before the Court concludes that the allegation is established on a balance of probability. Fraud is usually less likely than negligence.

[43] Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the offence. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on a balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on a balance of probability; its occurrence will be established (per Lord Nicholls in **Re H and Others** p. 586 (1996) 1 All ER.

[44] For a Will to be valid, it must have been signed by the testator or on his behalf, by his direction and in his presence (**section 6**, **Wills Act**), and the testator must have approved of its contents. The sole issue in this case is whether signature on the Will purporting to be that of the testator, Carlos Adrian Griffith is actually that of the Carlos Adrian Griffith. The Claimant's contends that it is not and it is a forgery, whilst the Defendant asserts that it is indeed the true signature of Carlos Adrian Griffith.

[45] **Section 3** of the **Forgery Act** of Jamaica 1942 defines '*forgery*' 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 notwithstanding that it is not false in such a manner as in this subsection set out ***[emphasis mine]***.

(3) ….

[46] **Section 4(1)(a)** further provides that forgery of *'any will, codicil, or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without the will annexed'*, if committed with intent to defraud is a felony punishable by imprisonment with hard labour for life. It follows therefore that what is being alleged by the Claimant is very serious, and the outcome of this case may have very serious consequences for the parties involved, particularly the Defendant and his witness.

[47] The authorities show that where the allegation is serious, such as in the case of forgery, convincing evidence is required for that burden to be discharged. [**Vacianna v Herod** [2005] EWHC 711 (Ch); **Fuller v Strom** [2000] All ER (D) 2392]. In **Vacianna v Herod**, the Court agreed with the learned authors of **Williams, Mortimer and Sunnucks on Executors, Administrators and Probate** (18th Edition, 2000), para 13.61, wherein it is stated that although Forgery is a criminal offence, since a probate action is a civil proceeding and not a criminal one, the standard of proof is not the same as in criminal proceedings. The Court added that the standard of proof 'is on the balance of probabilities' but also added the caveat that:

> *"insofar as they appear to be suggesting that, notwithstanding that the civil standard of proof applies, something more than a mere balance of probabilities is required, it seems to me one has to tread very warily. The more serious the allegation…convincing evidence is required. However, insofar as that statement might be suggesting something akin to a criminal standard of proof is required, I respectfully do not agree with it" [paras 20-21].*

[48] Also, in **Fuller v Strom** the Court stated the following on the point:

> *"While I recognise that the standard of proof is the civil standard on the balance of probabilities, it is well recognised that where a serious allegation (like forgery) is made, the inherent improbability of the event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event has occurred: see In re Hand others [1996] AC 563 per Lord Nicholls of Birkenhead at page 56."*

[49] Further, in **Halsbury Laws of England,** Civil Procedure (Volume 11 (2009) 5th Edition, paras 1-1108; Volume 12 (2009) 5th Edition, paras 1109-1836, the learned authors explained the burden of proof as follows:

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

Has the Claimant adduced evidence sufficient to discharge this burden?

[50] I agree with the Defendant's submission that the starting point for the Court in assessing matters of this nature is the presumption that the Will was properly executed and is valid, and therefrom the Court will examine all the evidence adduced to determine if it is sufficiently cogent to rebut the presumption. This presumption is embodied in the latin maxim, '*omnia praesumuntur rite et solemniter esse acta* which provides that where all formalities have been observed on the face of a document, it will be presumed that the said document was duly executed [**Williams on Wills**, Vol. 1, Chapter 13, para. 13.1].

[51] Indeed, in **Supple v Pender** and another [2007] EWHC 829 (Ch) [applied in **Haider v Syed** [2013] EWHC 4079 (Ch)], at paragraph 78, in finding that the

presumption in favour of due execution had been rebutted, the Court stated the following:

> *"I have considered very carefully all of the evidence in this case. I have not referred to all of the evidence in this judgment, but only to the evidence which I have found of particular assistance to me. The conclusion to which I have come is not one to which any court would lightly come. It was, however, a conclusion to which I was driven by the evidence. I started my consideration of the evidence in this case, from the position that all things are presumed to have been done properly. In other words, that I should presume that the Will had been executed properly. That is the starting point in any case in which it is contended that a document has not been properly executed. At most, however, it provides a rebuttable presumption."*

[52] In **Sherrington v Sherrington** [2005] EWCA Civ 326, the Court of Appeal held that very strong evidence was needed for the Court to find that a Will was not properly executed, where the signatures of the testator and the witnesses appeared in the right places and there was an attestation clause [see: **Williams on Wills**, Vol. 1, Chapter 13, para. 13.1, fn 2].

[53] It must be noted however, that the presumption applies only where there is no evidence before the Court as to the manner of execution of the Will. Where there is evidence before the Court, either proving or disproving due execution, the maxim does not apply. Certainly, once there is evidence against the due execution of the Will, the maxim cannot be applied to strengthen the case for due execution [**Williams on Wills**; **Re: the Estate of Slidie Basil Joseph Witter** [2014] JMSC Civ. 185, paras. 45-48]. In **Harris v Knight** [1980] 15 P.D. 170 at page 179, Lindley L.J. explained the principle as such:

> *"The maxim, 'Omnia præsumuntur 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 reasonably be 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 is not wanted where such observance is proved, nor has it any place where such observance is disproved. 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."

[54] Therefore, in the case at bar, since there is evidence by the attesting witnesses as to the due execution of the Will, the presumption, it seems to me, does not apply. I start from the position that the physical evidence, as well as the written and viva voce evidence before the Court as to the due execution of the Will indicates that the Will has been properly executed. The Will on its face appears to have complied with all the formalities of section 6 of **the Will's Act**, and both attesting witnesses, the Defendant and his brother Carlos, gave similar evidence as to the circumstances in which the Will was said to be signed by the testator. Their evidence is to the effect that May 5, 2002, they both visited the deceased's house; sat in the study room; the deceased dictated to the Defendant what to write in the Will; the Defendant wrote it down and then read it over to the deceased; the deceased agreed that what was read over to him was correct and then signed the Will in their presence, both the Defendant and Carlos then signed the Will.

[55] I also consider that neither of them appears to have anything to gain directly from the dispositions in the Will, given that the deceased left all his possessions to his wife Violet Griffith who, at the time of trial, was still alive. The evidence before the Court is that the Defendant has not helped Mrs. Griffith to write a Will, but it is not known to the Court whether she has one. It appears to me that the attesting witnesses would seemingly have more to gain if the deceased's estate were to be distributed on an intestacy. The Claimant has submitted that the Defendant's motive is that he simply does not want the Claimant to share in their father's estate and so he wants to control the estate by virtue of this Will. This, in my view, sounds extreme, notwithstanding that the Defendant did in fact file the previous claim for recovery of debt against the Claimant. The filing of that claim as well as this one, by brother against brother, indicates some level of disharmony between the parties, but the Court has not been provided with much

detail as to the nature and extent of any dispute between the parties so as to make any finding as to motive.

[56] Further, I find it peculiar that the Defendant would have had the Will of the deceased in his possession for so long, ten (10) years, unbeknown to his other family members (except for Carlos), and having come to Jamaica and attended his father's funeral. I arrive at this position, having considered that his father died in October of 2002 and it is the Defendant's own evidence that he did not return to Jamaica to carry out his duties as executor until 2007, with probate not being granted until three (3) years later in 2010. The Molynes Road property was transferred into the Defendant's name on transmission in 2012, but he still has not taken steps to transfer the property into his mother's name. His explanation for the delay is that he had to immediately return to his job and took the Will with him. He was living overseas at the time and he did not transfer the property to his mother as his mother was still in his care, and he and his brothers were in discussions as to their mother's continued maintenance and living arrangements. I also consider the Claimant's evidence, which remains unchallenged, that he did not become aware of the existence of the Will until suit was filed against him in 2012. This leads me to conclude that the Defendant might not have told his other family members about the Will's existence for all these years. The Will would have been a secret for about ten years since the passing of their father. This I find to be incredibly peculiar. I also do not find his explanation for the delay convincing.

[57] As to the relationship between the parties and their father, both parties asserted that they were close to their father. The Defendant disagreed that the Claimant was close to their father, and the Claimant disagreed that the Defendant and their brother Carlos were closer to their father and more trusted by him than he was. When asked if he considered himself to be his father's favourite child, the Claimant answered "yes", but no more favoured than any of the other children, and he disagreed that their parents favoured both the Defendant and Carlos more. I find the Claimant's evidence in this area to be less than forthcoming.

[58] In relation to familiarity with the deceased's signature, the Claimant asserted that before his father's death he used to visit him. He lived in his father's house from birth in 1948 until he moved out in 1972 when he got married, but maintained close familiarity. He did not live in the same house with his father again after 1972, but in 1980 he was close to the household visiting almost on a daily basis. It is not clear how he did this, as he averred that from 1972 he was away from the island. His evidence is that he became well acquainted with the manner and character of his father's handwriting over the half of a century that he was living with his parents and siblings, and seeing many documents signed by his father over that period of time. He has not only watched his father sign documents, but would have seen 'known signatures', documents where his picture and signature appear together. In response to the suggestion that he did not have the benefit of seeing his father sign as many documents as he said he did, he stated, he would not have for the period of time he was not living under the same roof seen all the documents his father signed, but would have seen subsequent documents signed by him prior to his subsequent illness and death.

[59] He did not notice that his father's handwriting changed over time, and he disagreed with the suggestion that he could not say with certainty that his father did not sign the disputed Will because he wasn't there when it was signed. Whilst, he agreed that he was not there, given his familiarity with his father's signature over 50-60 years, he asserted that the signature on the purported Will was certainly not his father's signature.

[60] The Claimant did not accept the suggestion that he has seen the deceased's signature different. They all looked the same to his eyes, even though he admitted that he was not trained in hand writing analysis. He agreed that it might very well appear the same to him but different to other persons. He also agreed that he has not seen every document signed by the deceased in his lifetime. When asked if that meant there may be documents the deceased has signed that he was not familiar with, his response was yes and that he had 'to consider it within the realm of possibilities as remote as it might be that his signature would

have been any different from those he has seen'. He used the term 'remote possibility' because his father had a very distinct and clear characteristic and consistent way of signing his name.

[61] He disagreed with the suggestion that he had no basis on which to say that he is extremely familiar with his father's signature. When asked if he accepted that persons' handwriting changes over time, his response was that he is not a handwriting expert but he had not seen any changes in the deceased's handwriting over the period mentioned earlier. It is entirely possible that handwriting could change over time depending on the nature of the change. However, he does not accept that his father's handwriting changed over time.

[62] The Defendant's evidence on this sub-issue is that he grew up at 125 Molynes Road at the deceased's property along with his siblings. He lived in the United States for several years during his adulthood. During this time, he travelled to Jamaica fairly often to visit the deceased as they shared a good relationship. In or around late April 2002 he was in the United States when he received a telephone call from the deceased asking him to return to Jamaica to see him about a very private matter. He is aware that the deceased was a private person who did not share all of his business arrangements with some members of his family, including his wife. However, his father confided in him in relation to sensitive matters. He spoke to the deceased who outlined to him that he was getting old and wanted to make a Will so that he could properly take care of his wife Violet Isabel Griffith, who is also the mother of both parties. He asserted that the deceased told him that he wanted him to be the executor of his Will, because he trusted him with his business affairs. His father told him not to tell his mother of the contents of the Will after it was made.

[63] I find that, on the evidence before the Court, I am unable to come to a determination as to which party was closer to the deceased and would have been in a position to be more familiar with the deceased's signature. Both parties made only bare assertions as to their familiarity with the signature. However,

both failed to give sufficient evidence as to the details of how often they would visit their father and in what circumstances, and for how long they would have had an opportunity to see the deceased's signature. I find the Claimant's evidence, in this regard, to be wholly insufficient to challenge the Defendant's evidence that he witnessed the Will being signed and I cannot find, on a balance of probability, that he saw the deceased's signature closely and frequently enough, that he would have been able to positively distinguish natural variations to the deceased's signature over time from a forged signature. Furthermore, the nature of this case is that the assertions on both sides are diametrically opposed and the allegations are serious. Credibility therefore plays a great role. In that regard, and considering the evidence, I cannot place great weight on the Claimant's assertion as to his familiarity with the deceased signature in deciding the issue before the Court.

[64] In relation to the dispositions in the Will, on the evidence before the Court, I do not find them to be unusually suspicious or peculiar. I accept the Defendant's submission that in the ordinary course of things it is quite acceptable that the deceased would have left all his possessions to his wife, who is still alive. There is no evidence before the Court as to whether there was any acrimony between husband and wife that would cause the gifts to her to be suspicious. While, it is commonplace for parents to provide for their children in their Will, particularly if they enjoyed a good relationship with them, without more, I do not think it excites suspicion in these proceedings. The Claimant stated it was unusual and surprising to him that nothing was left for him in the Will. In my view, however, this adds nothing to the resolution of the issue at hand.

[65] Further, there is the issue of what both parties say they were told by their father in relation to a Will. The Claimant stated that his father had told him he would not make a Will as he wanted the estate to be divided equally. However, he could not say when these discussions took place or why his father wanted this to be so. As he rightfully agreed, even if his father did in fact tell him that he would not make a Will, his father could have still gone ahead and done so. Depending on the

amount of time between this discussion and the date of the purported Will, he could have very well changed his mind. The Defendant on the other hand stated his father told him that he was getting old and wanted to make a Will so that he could properly take care of his wife. He also said his father told him that he should not tell his mother of the contents of the Will after it was made. This he claims was said to him May 2, 2002, three (3) days before the purported execution of the Will which, if it was actually said, would have been very close to the date of execution of the Will.

[66] It follows, therefore, in my view, that this case falls to be determined on the evidence regarding the signature on the Will itself. In assessing the evidence of Ms. Beverley East, I consider that, though I may be guided by her evidence, I am not bound to accept her findings and conclusion. The Jamaican Court of Appeal has long since accepted, in **Clarke v Beckford et al** JM 1993 CA 33, that expert evidence may be rejected with good reason:

> *"The peril facing expert evidence is that, like any other evidence tendered, it may for good reason, be rejected. The trail [sic] judge had the benefit of listening to and observing this witness testify as he compared the disputed signature with the accredited signatures of the testatrix. Further, he had the benefit of addresses from counsel for both parties who examined his evidence in great detail and then he demonstrated in his judgment his assessment of the evidence before concluding that he preferred the real evidence to the comparison evidence."*

[67] I find to be particularly useful, the Court's comment in approving the finding of the lower Court in **Clarke v Beckford;**

> *"In coming to this conclusion, the learned judge relied on the credibility of Tallow and the inherent weakness in the expert evidence. The expert admitted that variations in handwriting could be accounted for in terms of age, posture and the amount of practice before a specific signature was made. The specimen signatures ranger over the years 1972 to 1983 while the Will was signed in 1981. The testatrix was born in 1907. Furthermore, the appellant Pearl recognized the signature of her aunt on a postal document (Exhibit 11), introduced in Court by the respondent, while the expert evidence was that he could not come to an opinion as to who was the author of that exhibit."*

[68] Further, in **Fuller v Strum** [2000] All ER (D) 2392, the Court, in rejecting the handwriting expert's conclusion that the Will was a forgery, aptly summed up the role of expert evidence and how the Court should treat with it:

> *"The training of experts enables them to identify facts which a lay witness or a judge could not identify, without expert help. Such evidence may truly be described a scientific and the radiologists' evidence as to when the injury occurred falls plainly within this category. But some expert evidence may amount to no more than the drawing of inferences from facts observable a much by the expert as by a lay witness; and the inferences to be drawn from those facts may be capable of being drawn as much by the expert as by a lay witness. Of course, in such a case, the views of the expert are entitled to be given great weight. After all, the expert's training and experience will have equipped him or her to draw these inferences. But in relation to this type of expert evidence the judge, I think, is entitled to form his own view, having regard to, and balancing, the other evidence available to him in this case.*
>
> *I consider that I am not only free to decide the forgery issue for myself but that it is my responsibility to do so, taking into account all the evidence before me."*

[69] The Deputy Judge also noted that handwriting expertise is manifested in both scientific evidence that may utilize methodology and equipment to bring about a conclusion not visible to the untrained eye, and also non-scientific evidence. In rejecting the expert's evidence, the learned judge assessed the expert's methodology, findings and conclusion, and the reasoning behind the conclusion, and having examined the signature herself, found that the main reason the expert concluded the Will was a forgery was owing to inferences she had drawn from the visible differences between the signatures, an inference which the judge was capable of making for herself.

[70] In the case at bar, I am in agreement with Ms. East's findings and conclusion. Having myself examined the questioned signature on the Will, there are several differences that are visible to the untrained naked eye. Ms. East concluded that it was her professional opinion that the deceased did not sign the Will, based on what she found to be eleven (11) inconsistencies in the questioned signature on the Will that according to her did not match the 'master pattern' of the 'known signatures'. Having thoroughly gone through these 'known signatures' and each

'inconsistency', comparing them one by one, I was able to readily see these inconsistencies for myself, and I find favour with her conclusion. These inconsistencies, taking into consideration the other evidence before the Court, I find are too many and too varied to be accounted for by natural variations due to the age, health, and other characteristics of the deceased and the conditions under which the Will was purportedly signed.

[71] Particularly obvious to me from Ms. East's findings as to what the consistent characteristics of the known signatures were, are:

1. The eight initial upstrokes
2. That the signature concaved in the middle of its formation
3. That the upper loop in the letter **G** was elaborate
4. That the letter **t** has a double stem
5. That the letter **t** has very little evidence of a **t** bar
6. That the letter **h** forms a round downward motion

[72] From the eleven inconsistencies Ms. East identified in the questioned signature which did not match the known signatures, the following was obvious:

1. The signature sits on the line
2. There are initial strokes below the base line which are not evident in any of the known signatures
3. The letters **C** and **A** are clearly identifiable
4. The formation of the upper loop in letter **G** is smaller in size and does not resemble any of the letter **G** formations in the known signatures
5. There is a pause and space before the double letter **f**
6. The letters **f** are skeletal

7. The second letter **f** is higher than the first

8. The bar of the letter **f** continues across in an upward motion through the remaining letters

9. The letter **h** is angular

10. The entire signature is angular in its formation

11. The signature is not concave

[73] I could not easily discern that the questioned signature had a 40 degree slant as found by Ms. East, nor could I fully agree that in all the known signatures the double 'fs' were equal in size, as in the signature labelled K3 the second 'f' appears a little bigger.

[74] Simply put, from the naked eye, the signature on the Will looks clearly different from the 'known signatures' of the deceased on the documents before the Court that were undisputedly signed by him, whether looking at the signature as a whole, or looking at the letters individually.

[75] I have come to this conclusion bearing in mind the methodology used by Ms. East, as well as the weaknesses pointed out by the Defendant in relation to her report and evidence. Whilst, I agree that there are limitations in the methodology used, I disagree with the Defendant that these are of a nature and to the extent that the report should not be relied on.

[76] Firstly, the Defendant submits that the sample size used to arrive at the master pattern and known signatures is too small and limited based on the age of the testator and the types of documents used, and that examining more signatures over the entire period of the deceased's lifetime, would have demonstrated a more accurate or consistent pattern in his true signature, including the variations in his signature over his lifetime. The sample size is admittedly small given that the deceased, who was born in 1921, was 81 years old at the time of his death, but yet only 4 documents, 3 of which were signed by him in 1978, 1996 and 1999, were submitted. The police report (K3) was issued in 2001 but it is not

clear when the signature thereon was made. While I agree that the more samples examined, the more accurate the master pattern of the deceased's signature would be, I accept Ms. East's evidence in cross-examination that the sample size was sufficient because she 'found substantial similarities in the samples submitted to provide an opinion of authenticity', and that were she unable to conclude that all the documents were signed by the same person, she would have requested more samples. In her opinion she doubted that if she had twenty more sample documents the master pattern would have changed. This, she said, was so because she found the sample documents so different from the questioned signature.

[77] Secondly, the Defendant took issue with what he submitted were variations visible to the untrained eye in the 'known signatures' of the deceased. In cross-examination, counsel for the Defendant suggested to Ms. East that there was no master pattern for the deceased and that his signature was in a constant variation over his lifetime. Ms. East disagreed that there was no master plan for the deceased and was unable to agree to the latter since she had not seen samples over the variation of his lifetime. However, she did admit that if the deceased's mind and body were changing, overtime his signature would change. In her written response, Ms. East had noted that 'handwriting is a subconscious behaviour and in most cases the signature becomes larger, distorted, or tremor is evident which slows down rather than speeds up the writing. As we age or become ill, one's handwriting may reflect the changes of our mind and body.' She also explained that she had made allowances for variations within the samples as there were always variations in a signature. I accept Ms. East's evidence, as, looking at the 'known signatures', although one can see with the naked eye that there are differences, these differences are slight, and the similarities are greater.

[78] Thirdly, in relation to the issue raised by the Defendant that Ms. East used only one of three signatures made by the deceased on the Application for Renewal of Driver's Licence (exhibit 2) which were noticeably different to the untrained eye, although Ms. East admitted there were variations between the two unused

signatures, as well as with the signature that was used, she disagreed that these variations were significant. Though at first glance it may look peculiar that Ms. East would choose to use only one of the three signatures on that document, I am of the view that given the nature and position of the other two signatures, her choice was quite understandable. Even though she did not explain how it is she came to choose the signature she used, having examined all three signatures on the document myself, I surmise that the other two signatures were not as clear as the one used, in that they were written in a small area with the top portion of both signatures going into the line above, causing the signatures to overlap with the words written above. On the other hand, the signature used was written in a large space, with no words immediately around it, and so was very clear. Notwithstanding this overlapping with the other two signatures, I can see the clear differences between the three signatures that the Defendant speaks of. However, I also can clearly see, having compared them all with the questioned signature, that none of them bears a close resemblance to the questioned signature.

[79] Fourthly, the Defendant takes issue with the first inconsistency pointed out by the expert. However, it is to be noted that the Defendant has made his submission based on a misinterpretation of the expert's findings. He states that Ms. East found that a signature on a baseline is usually an indication of forgery; however, Ms. East actually stated that 'a signature sitting on a line is usually an indication of a forgery'. The Defendant's grouse is that, according to him, she jumped from what he referred to as an 'absolute position' that this was always an indication of forgery, to a more flexible position, in her responses and cross-examination evidence, that it would not be suspicious if there is a baseline. The Defendant submitted that in both the sample letter dated December 4, 1978 ("K1") and the sample application for a driver's licence renewal dated 1996 ("K2"), there is no baseline on which the signature could have been said to sit, as the testator signed into a blank space. It is also argued that on the sample repayment schedule of 1999 ("K4"), the signature of the testator actually falls below the line.

Thus, the Defendant urges this Court to reject Ms. East's evidence on the basis that it is conflicting and inconsistent.

[80] Ms. East explained in cross-examination that a baseline is an imaginary line that the author creates within the signature whether a line is there or not. A pre-existing line is not a baseline. Her evidence is that a signature sitting squarely on a pre-existing line is normally one that raises suspicion. The fact that the questioned signature sits squarely on a pre-existing line, whereas the signatures on the sample documents do not, it seems to me, is precisely why Ms. East says it raises suspicion. An authentic signature creates its own baseline without the need for a line, whilst a signature that is unfamiliar would require the line to guide it. Although, there are cases where a signature sitting on a pre-existing line is authentic, in such cases there is an identifiable baseline or rhythm. Where she cannot identify a rhythm or baseline, the signature would be deemed suspicious. She gave evidence that the baseline in the questioned signature is different, in that it is straight whilst the baseline in the known signatures is concave. Also, the loop and the form are different and the signature starts in a different formation. Formation and movement, she says, is a very significant part of handwriting identification. She explained that there is a significant pattern within the known signatures that cannot be identified in the questioned signature. The witness then demonstrated to the Court the way the known signatures formed a concave line in the middle, that is, they bend in the middle. In the master pattern, there was a large loop in the middle of the signature which is what she considered part of the master pattern. The master pattern is formed in a consistent way in the known signatures, labelled in the report at K3, K1, K4 and K2. I find that the witness has sufficiently explained her position, which I find to be logical and credible. I therefore reject the Defendant's submission.

[81] Further, even to the naked eye, the known signatures appear to have been written with some amount of consistency that is absent from the questioned signature. I believe this is the 'rythym' that Ms. East speaks of. Also, as the expert found, there is a break or pause in the signature between the letter 'I' and

the first ‘f’ which, in my estimation, indicates an attempt by the author of the signature to very carefully write that signature. Moreover, I accept Ms. East’s evidence that the absence of a pre-existing line below the known signatures was not the cause of the concave slant. Her reasoning that ‘K4’ has a pre-existing line but still has a concave slant is easily discernible by looking at the signature. She did not accept that the reason for the slant in K4 is because the pre-exiting line ends in the middle of the signature and that the signature slants after that. While she agreed that the pre-existing line ends and there is a slant in K4, her evidence is that the concave is different from the slant, and the slant has nothing to do with the pre-existing line.

[82] In relation to the written response that ‘there are many variables that can alter a signature, including bad lighting, malfunction of writing instrument, illness, position of writing, Ms. East agreed that on the day the Will was signed, these factors could have impacted or altered that signature, but none of these factors were evident in the questioned signature. She agreed that she was not present when the Will was being signed.

[83] In relation to the issue of the deceased’s health which played a big role in the matter at bar, it is interesting to note that while both parties have argued that the testator was ill and urge the Court to consider; his illness in their favour, both parties object to the Court placing reliance on the testator’s health in relation to the opposing party’s case. In that regard, the Claimant averred that his father was diagnosed as suffering from diseases that make him doubt whether his father had the mental capacity to make a valid Will May 5, 2002. This diagnosis, he says, was made by a neurologist and is contained in a medical report. That report, however, if it is indeed in existence, is not before the Court and therefore the Court can place no reliance on it. Indeed, there is no report before the Court as to the deceased’s mental capacity, nor is there any evidence before the Court to indicate that the deceased displayed any symptoms of reduced mental capacity at the time the Will was signed or at all. In the premises, the Court will not countenance the Claimant’s unsubstantiated speculations. It is established

law that, although the burden of proving testamentary capacity falls on the person propounding the Will, the law presumes capacity once the Will on its face has been executed in the manner prescribed by law, and there is no evidence before the Court to the contrary [**Halsbury Laws of England**, Wills and Intestacy, Vol. 102 & 103 (2016), Para. 899].

[84] The Defendant too has submitted that the deceased was suffering from ill-health, and named Creutzfeldt-Jakob Disease as one and that the state of health of the deceased is one of the factors that would account for the variations in his signature. The Defendant gave evidence that his illness caused him to shake at times, including the day when he signed the Will. Peculiarly, the Defendant makes this argument whilst at the same time submitting that not one shred of evidence has been presented as to the testator's state of mind and health, and that 'in the absence of medical evidence, the Claimant's assertion as to the extent of the testator's illness and that it affected the deceased so badly that he was incapable of signing the Will is unsupported. The fact is that, there is evidence before the Court as to the testator's health, albeit, very minimal. This is contained in the certificate of the death of the deceased, dated October 23, 2002, that is in evidence attached to the witness statement of Carlos Alphanso Griffiths and labelled "CG2". Therein, Dr. Leslie A. Toby lists the deceased's cause of death as Cerebro-vascular Accident due to Cerebro-vascular disease due to or as a consequence of Alzheimers Disease and Creutz-feldt Jakobs Disease. It is to be noted however, that in front of the latter two diseases there are question signs. Also, in the field to the right of those two diseases, where it says approximate interval between onset and death, written in is 2-3 years, also with a question sign in front of it. The doctor did not qualify these entries with any explanation. In my estimation, what is to be inferred from those last two items is that the doctor was not sure that the deceased was indeed suffering from Alzheimers and Creutzfeld Jakob's disease. The Court cannot therefore make a pronouncement based solely on the death certificate, as to whether the deceased was suffering from an illness that would have affected him so badly as

to cause his signature to change, or conversely, that would have been shown in a signature made by him.

[85] What is also interesting is that the Claimant relies on the Defendant's own evidence as to the deceased state of health and symptoms to bolster his argument that the signature on the Will was forged, as the signature, it is submitted, shows no sign that the deceased was ill.

[86] The Defendant's evidence is that when he arrived in Jamaica and went to the Molynes Road premises on May 2, 2002 to see the deceased, he observed that the deceased was shaky at times in his movements and could not see very well, but he was not alarmed or surprised by this as he was aware that the deceased was elderly and had poor eyesight and motor skills. He knew that there were times when the deceased's shakiness was non-existent, times when it was mild, and times when it was severe. In cross-examination, he agreed that the physical condition of his father on the day he signed the Will would be an important fact, and that the shakiness would have affected the quality of his writing. The shaking was intermittent. It was possible that the shaking would have caused his father's handwriting to deteriorate, but what he saw when his father signed was a firm signature. The witness agreed that his father's failing eyesight would have the same effect, but only if it went uncorrected. His father wore glasses. He also agreed that it is possible that the features of the deceased's health, that he averred to in his witness statement, are factors that would cause the deceased's handwriting to deteriorate, and also that poor eyesight is not intermittent. He clarified that when he states in his statement that he observed that the deceased was shaking in his movements but on that particular day the shaking was mild. By particular day he means the day on which the deceased signed the Will. He agreed that even the mild shaking would be evident in the deceased's handwriting. He also agreed that the deceased's poor eyesight which he himself had observed, would still be a condition of his health May 5, 2002. His father had poor eyesight for many years, as well as on that day. When asked by opposing Counsel whether the signature purported to be that of Mr. Carlos Adrian Griffith

on the Will appeared to be that of a man with shaking hands, his response was "to my eyes, no". He agreed that the signature does not appear to be that of a man not seeing very well, and that the person that signed it could see what he was doing, 'if the man had glasses'. He did not agree that because of his father's poor eyesight it was unlikely that he could put his signature so neatly on the line. He agreed that the words he wrote himself were legible, and that, for the most part, the letters where his father signed were also legible. In response to the question as to whether he agreed that the letters there seemed to be affected by shaking hands, he said, in his opinion a shaky hand would be illegible; some letters there are legible, some are not. In response to the question whether the hand that signed as testator appeared to be as steady as his own, he stated that some letters in both signatures are illegible, so both signatures have that same characteristic. He disagreed with the suggestion that the signature in the Will was not made by a man with poor eyesight. He also disagreed with the suggestions that he prepared the Will in its entirety, including the testator's signature.

[87] Carlos Griffith's evidence as to the deceased's physical condition was that his father was involved in a motor vehicle accident in July of 2002 and since then his physical condition deteriorated more quickly. The witness saw the deceased after the accident and he was moving much slower than before the accident. However, he had no recollection that his father was shaking at all May 5, 2002 when he went to witness the Will. He looked at him, but he wouldn't say he looked at him very closely. When he stated in his witness statement that his father was trembling, he meant that sometimes in his feet and in his body he was shaking. He does not recall his father trembling at all on that day. As to his father's eyesight, he stated that it had been poor for quite a number of years before 2002, because he wore glasses. He would say it became poorer over time. He would not be able to say that as a teacher, a combination of poor eyesight and trembling hands would produce writing of poor quality. When it was suggested to him that the handwriting on the Will was of good quality, his response was that he would use the word 'clear' rather than 'quality. It looked legible to him. He would not say 'very legible'. He agreed that where it says testator to sign, the

words are legible to some extent. Some letters are legible. He noted it was difficult for him to say what letters were not legible. He could say which letters were legible: what looked like an ‘h’, two ‘f’s and a ‘c’.

[88] Ms East’s evidence as to the alleged illness suffered by the deceased and its relationship to the signature can be summarized as follows:

If the deceased were suffering from Glaucoma, Creutzfeldt-Jakob Disease, Parkinson’s Disease, or similar illnesses, it would affect everything including the master plan. If someone had such a severe illness they would be totally incapable of writing with such fluidity in their signature. This conclusion is based on the examination of the questioned signature on the Will. Based on the initial examination and appearance, the signature in its entirety was too fluid for someone who may have been ill to write with such dexterity, preciseness and fluidity. She agreed that there was no medical basis for that conclusion as she is not a doctor, however, her opinion was based on her twenty six (26) years of experience, and looking at the questioned signature, the formation is too defined and angular to be from someone who may have been sick. She disagreed that a medical doctor would be more conclusive in making this determination. On the question of whether a doctor trained in identifying the symptoms of the ailments given in the examples would know more about whether the person would be capable of making those signatures, her response was that a doctor would know more, however research has shown that handwriting changes through illnesses. She admitted she did not make reference to this research in her report. She disagreed with the suggestion that someone suffering from such ailments would have moments of lucidity and would be able to make a smooth signature, and stated that from her experience someone as sick as is being reported would be unlikely to make a signature so smooth and fluid. She disagreed that because she is not a doctor, she is not able to speak to the effect of the symptoms of the ailments given in the examples. She agreed that without medical training she could not definitively say how these ailments would impact the deceased’s signature on a particular day, but with her extensive training she could look at the

signature, examine the signature, and identify ailments and illnesses within a signature. She is not able to speak to medical ailments, however, as a handwriting expert, she is trained to identify illnesses within a signature and the questioned signature does not have any of the characteristics that are evident in the signature of someone who is ill. She is generally not able to diagnose specific illnesses, but if somebody is sick it shows in the handwriting. If someone is on medication it shows. If there is brain trauma or a stroke it shows in the handwriting. Handwriting is a brain function so any change of the function of the brain would show in the handwriting. That is how she has been trained. If there is a moment or periods of lucidity that would also be shown in the handwriting.

[89] I am in agreement with Ms. East's evidence on this point. In addition to her training and expertise in this area, in my estimation, logic dictates that if the deceased were indeed suffering from an illness that caused him to shake or tremble, as the Defendant himself admitted, that is expected to be evident in his handwriting. It is clear that the impugned signature exhibits no sign of shaking or other illness. This too was readily admitted by the Defendant. The Defendant's witness, Carlos, also admitted that the signature was indeed written in a clear manner. While I cannot conclude definitively that the deceased was diagnosed with an illness that would have negatively affected his handwriting, given the lack of medical evidence, the cumulative evidence from both parties leads me to conclude that the deceased was not in the best of health and showed visible symptoms of his waning health prior to his death. The signature appears to have been so carefully and precisely written. In my view, it is too pristine to be written by a person suffering from ill health, but on the other hand, if the testator was in good health, what would account for the stark difference in that signature as compared with the known signatures of the deceased? The signature purporting to be that of the testator does not appear to be signed by a person who was ill or suffering from any symptoms due to age, nor does it appear to be affected by bad lighting, faulty pen, or other conditions that would result in a natural variation in the signature of the deceased. In the premises, I have formed the view that the signature was not signed by the deceased.

[90] The Defendant would have the Court believe that the deceased was suffering from a compromised state of health but only insofar as it would account for the differences in the signature on the Will, but not to the extent that it would affect the deceased's ability to sign the Will. He painted a picture of the deceased as an elderly man with 'poor eyesight and motor skills'. He says the deceased was shaky in his movements at times when he arrived at the house three days before the signing of the Will, yet the shaking was mild on the day the will was being signed; then he says he noticed the deceased could not see very well, but, on the day he signed the Will he was wearing his glasses. I find his evidence to be less than credible, and I therefore reject both his evidence and his witness Carlos' evidence as to the attestation of the Will. I also cannot agree with the Defendant that the conclusion of the report has been tainted by its limitations and should not be relied on.

CONCLUSION

[91] Based on the foregoing, the Court rejects the evidence of the Defendant and his witness as to the due execution of the Will. The cumulative effect of the expert's findings, the Court's observations as to the deceased's known signature and the impugned signature on the Will, as well as the Defendant's lengthy delay in making the existence of the Will known, leads the Court to the conclusion that, on a balance of probabilities, the signature on the Will was not made by the deceased, and the Will is therefore a forgery. Therefore, on the totality of the evidence, I find that the testator's signature on the Will is not genuine.

ORDER

1. That the Last Will and Testament of the deceased, CARLOS ADRIAN GRIFFITH, otherwise called CARLOS ADRIAN GRIFFITHS dated May 5, 2002, is a forgery and is hereby declared null and void, as the signature purporting to be that of the deceased is not in fact his signature.

2. That the probate of the Last Will and Testament of the deceased, CARLOS ADRIAN GRIFFITH, otherwise called CARLOS ADRIAN GRIFFITHS, dated May 5, 2002, granted to the Defendant on December 10, 2010 is hereby revoked.

3. That the deceased, CARLOS ADRIAN GRIFFITH, otherwise called CARLOS ADRIAN GRIFFITHS, died intestate and his estate is to be distributed in accordance with the Intestates' Estates and Property Charges.

4. That, in accordance with section 158 (2) (b) of the Registration of Titles Act, the Registrar of Titles is hereby ordered to cancel the entry on the Duplicate Certificate of Title concerning all that parcel of land registered at Volume 731 Folio 18 and comprised in Lot number 7 on the plan of 115 Molynes Road transferring the property on transmission October 21, 2002 under grant of probate entered January 25, 2012.

5. Costs to the Claimant to be taxed if not agreed.