



[2021] JMSC Civ 150

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2018 P01083**

<b>BETWEEN</b>	<b>DAPHNE YVONNE JONES</b> <b>(By legal guardian Earl Anthony Swaby)</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>HORACE KIRLEW</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>JACQUELINE BISRAM</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

**VIA VIDEO CONFERENCING**

**Ms. Shannon Johnson instructed by Antoneita Hall of Counsel for the Claimant.**

**Mr. Mike Hylton Q.C. and Shanique Scott instructed by Hylton Powell and Associates for the Defendants**

**Heard: May 13, 2021 and June 11, 2021.**

**Section 6 Wills Act – Whether the now deceased wrote his name at the foot of a document – Whether he intended the document to be his last Will and Testament – Whether the writing of the name and not a signature satisfies the Wills Act.**

**LAWRENCE GRAINGER, J (AG)**

**BACKGROUND**

**[1]** On 11<sup>th</sup> June 2021, I delivered an Oral Judgment where I refused the Orders sought in the Fixed Date Claim Form to, among other reliefs, declare a Will invalid. These are the written reasons for my decision.

- [2] On the 8<sup>th</sup> June 2018, an application for a Grant of Probate was filed in the Supreme Court Western Regional Registry. Among the documents presented to ground the application was the alleged Last Will and Testament of Rupert Anthony Jones also known as Rupert Jones, dated the 27<sup>th</sup> October 2016. Mr. Jones died on the 3<sup>rd</sup> January 2018.
- [3] The Applicants for the Grant were Horace Kirlaw and Jacqueline Bisram, the Executors named in the said alleged Last Will and Testament of Rupert Anthony Jones.
- [4] In summary, in the document, the deceased devised his dwelling house to his wife, Daphne Yvonne Jones, for life and on her death, his wish was for the house to be sold and the net proceeds be divided amongst his nieces and a nephew. The larger share of 50% was devised to Jacqueline Bisram, one of his nieces. His residual estate, if any, was devised to his wife Daphne.
- [5] At the end of the said Last Will and Testament, the two persons who subscribed their names as witnesses noted their occupation as Registered Nurse and Nurse respectively.
- [6] Earl Anthony Swaby is the son of Daphne Yvonne Jones, stepson to the deceased, Rupert Anthony Jones.
- [7] On the 25<sup>th</sup> September 2018 he was appointed legal guardian of his mother and granted jurisdiction over the management of the property and over her affairs.
- [8] Mr. Swaby thereafter entered a Caution and subsequently acknowledged service of the Warning to Cautioner dated the 23<sup>rd</sup> November 2018.

## **THE CLAIM**

- [9] On the 31<sup>st</sup> January 2019, Earl Anthony Swaby, as Legal Guardian of Daphne Yvonne Jones, filed a Notice of Application for Court Orders, seeking to challenge the validity of the Will.

[10] He sought the following orders :

1. An order that this Honourable Court shall pronounce against the force and validity of the alleged last will and testament dated the 27<sup>th</sup> day of October, 2016 of the deceased, Rupert Anthony Jones otherwise called Rupert Jones and declare the same null and void for the reason that the alleged will is a forgery, as the signature thereon is not that of the deceased, **RUPERT ANTHONY JONES** otherwise called **RUPERT JONES**.
2. The deceased Rupert Anthony Jones otherwise called Rupert Jones died intestate and that his estate is to be distributed in accordance with the Intestates Estates and Property Charges Act.
3. That the costs of this action to be borne by the Defendants or, in the alternative, there be provision for the costs of this action to be taken out of the estate of the said deceased, Rupert Anthony Jones, otherwise called Rupert Jones.

[11] The grounds of his application were as follows :-

- i. That the Claimant being very familiar with the signature of his deceased stepfather, has reason to belief that the signature on the Will which was solemnized is not that of the deceased.
- ii. That the opinion of the handwriting expert will assist the court in dealing with the issues of legitimacy of the Will.

[12] Pursuant to Rule 68.55, which addresses how to commence probate proceedings, on the 13<sup>th</sup> October 2020, by and with the Consent of the parties, The Honourable Mr Justice Rattray made an Order that the Notice Of Application For Court Orders should be treated as if begun by a Fixed Date Claim Form and the Affidavits of Earl Anthony Swaby and Jeanne Robinson Foster, filed in support of the Notice of Application for Court Order, were to stand as filed in support of the Fixed Date Claim Form.

[13] The latter was acknowledged by both sides as being done in error, as Mrs Foster was a defence witness.

### **THE CLAIMANT'S EVIDENCE**

[14] Mr. Swaby's Affidavit filed on Jan 31 2019 was admitted in evidence as his examination in chief. He asserts that a copy of the purported last Will and Testament of RUPERT ANTHONY JONES was served on his attorney-at-law and after examining it, he noticed that the signature on the said Will did not appear to be that of the deceased.

[15] He indicates further that he was familiar with the deceased's signature because he had frequently seen him write and "ascribe" his name to documents and he was well familiar with the now deceased manner and character of handwriting. He therefore retained Mrs. Beverly Y. East, a Forensic Document Examiner, to conduct a "comparative analysis of the alleged signature of the deceased on the said Will with other official documents bearing the signature of the deceased and to render her findings accordingly" and Ms East has found that the signature on the alleged Will is not that of the deceased.

[16] Mr. Swaby's evidence was that the signature on the Will purporting to be that of Mr. Rupert Anthony Jones was a forgery and an attempt to fraudulently dispose of Mr. Jones assets in a manner prejudicial to the interest of his beneficiaries in an intestacy.

[17] Two exhibits were admitted through the Claimant. They are the Order granting legal guardianship of Daphne Yvonne Jones to him (**Exhibit 1**) and a copy of the Report of Beverley East (**Exhibit 2**).

[18] Mr. Swaby was not cross-examined.

### **THE HANDWRITING EXPERT**

[19] On the 14<sup>th</sup> April 2021, Ms Beverley East was deemed by the Court an Expert witness and her Report dated October 30, 2018 was accepted as an Expert Report.

- [20]** She was also to have attended upon the Court for Cross-examination. However, the parties agreed for her to give her evidence via Video Conferencing.
- [21]** Ms. East indicates that she was asked to ascertain whether the signature on the questioned document (the Will) bears an authentic signature.
- [22]** She lists the following documents as being received by her for examination and comparison purposes:
1. Photocopy Last Will and Testament of Rupert Anthony Jones, dated the 27<sup>th</sup> of October, 2017
  2. Photocopy Government identification, issued 19<sup>th</sup> November 1984
  3. Photocopy National Commercial Bank cheque dated April 2, 2013
  4. Photocopy transfer instruments-dated the 16<sup>th</sup> June 2014, 24<sup>th</sup> May 2016 and 16<sup>th</sup> November, 2016.
  5. Photocopy Mayberry Valuation Form-dated the 14<sup>th</sup> February 2014
  6. the Questioned Document, the purported Last Will and Testament of Rupert Anthony Jones, dated the 27<sup>th</sup> day of October, 2016.
- [23]** Seven additional documents were sent on October 31<sup>st</sup> 2018, for comparison and examination purposes; six pension scheme certificates dated from 1963-1968 and one JPS document dated 1974.
- [24]** Ms. East stated that there are four principles in the structure of handwriting identification, which are extremely important when examining a handwriting sample or a signature for authenticity. These are: Movement, Form, Shading and Spacing.
- [25]** The following were her findings with respect to the signature on the questioned document after comparing it with the known signature of the deceased:

- i. Wider spacing in the letter R Formation
- ii. Misspelling of the name Rupert with the letter J between R and u.
- iii. An angular formation created in the middle of the letter R formation
- iv. Sharp points at the top of the letter formations.
- v. Inconsistent baseline in the entire signature
- vi. Full Balanced J formation while the known signatures show an imbalance in their formation.
- vii. The letter **o** is tightly closed which is NOT the case in known signatures
- viii. The letter **s** is also closed.

**[26]** She concluded that the signature on the questioned document was not the authentic signature of Rupert Anthony Jones.

**[27]** The following were the reasons for her conclusion:

1. The signature on the questioned document does not bear any significant similarities when compared to the known signatures
2. There are several characteristics in the handwriting of Naomi Thompson (one of the alleged witnesses to the Will) that can be found in the questioned signature.

**[28]** Ms. East expressed that she has examined all documents for comparison by using accepted scientific principles and techniques of document examination, to determine whether the signature is authentic, consistent with verified known exemplars of the individual's writing and within the range of normal variation of genuine signatures and handwriting.

**[29]** Handwriting elements examined include, but are not limited to: Line quality, speed of writing, fluidity, letterform, construction, size, relationship to signature line and any other unique identifying characteristics. It is also necessary for a genuine authentic signature to be void of any recognized signs of tracing, imitation, disguise, duplication by a process of cut and paste or other elements intended to deceive.

- [30]** Habitual handwriting characteristics including, but not limited to: line quality, speed of writing letter form, size, relationship, placement on line, spacing, range of variation, rhythm and skill level were looked at.
- [31]** Counsel having sought and received permission, Ms. East amplified the evidence set out in her Report. She opined that the signature noted at the 27<sup>th</sup> October 2016 under the heading “Original with Client,” on the page of the Wills Book exhibited by Jeanne Robinson Foster, is the authentic signature of Mr Rupert Jones. As it relates to the last page of the alleged Last Will and Testament, her view was that the written date on the document, the 27<sup>th</sup> October and the purported signature of Mr. Jones below, were written by two different pens. The other difference she highlighted was that the skill level of the writer of the signature was more fluid whilst the skill level of the writer of the date was slower.
- [32]** In cross examination she agreed that she can be described as a forensic document examiner and in that capacity she offers various services to include confirming the authenticity of signatures, confirming whether documents have been tampered with and confirming hand writing. She then would prepare a Report based on the service that she was asked to provide.
- [33]** Ms East admitted to not having attached all documents relied on and instructions received explaining that the documents were returned to instructing Counsel.
- [34]** She was asked whether the last page (with the relevant signature) of the alleged Last Will and Testament of Rupert Jones that she examined( as provided by the Claimant) and the last page of the alleged Last Will and Testament provided by Mrs Foster, were copies of the same document and she said no.
- [35]** She opined that the alleged signatures of Rupert Anthony Jones seen on the two pages were different and agreed that the words “Registered Nurse” that appear on both documents were written differently.

- [36] In describing her method of examination, she agreed that in the questioned document, she found no elements of tracing, imitation disguise, duplication or any other elements that are intended to deceive.
- [37] It was her opinion that in most cases where it comes to formal documents persons don't usually write their full names and that when the full name is already written out on the document they would sign what they are comfortable with.

### **The DEFENCE**

- [38] The Defendants did not provide any Affidavits and therefore did not give evidence. The sole deponent on their case was Mrs Jeanne Foster Robinson, an attorney at law and the Counsel who had filed the application for the Grant of Probate.
- [39] Her Affidavit was filed on May 22, 2019 and dated May 20 2019 and ordered to stand as her evidence in chief.
- [40] Mrs. Robinson Foster said that in or around October 2016, she was contacted by Mr. Horace Kirlew, the 1<sup>st</sup> Defendant, who advised her that the now deceased, whom she knew before, wanted her to visit him at the Montego Bay Hospital to take instructions for a Will.
- [41] Her office having made an appointment for her to see him, on the 26<sup>th</sup> October 2016, she attended the Hospital and took written instructions from Mr. Jones. She prepared the Will in duplicate and the next day, the 27<sup>th</sup> October, 2016, she returned to see Mr. Jones with the Will. Her evidence was that she read over the Will to Mr. Jones and he confirmed that the contents were correct.
- [42] Counsel said she then made a request for two nurses who were on duty at the time to witness the signing of the Will by Mr. Jones, which they did. The nurses were Naomi Thompson and Clara Belle Veuner Woolcock. She avers further that she does not know any of these nurses personally and that in her presence Mr. Jones signed and dated one original copy of the Will.

- [43] She placed the original Will in an envelope, labelled it with Mr. Jones' name and sealed it in his presence. Mr. Jones also signed and dated the duplicate and the same two nurses also witnessed his signature on that document. However, Mr. Jones was given on the said day at the hospital, the sealed envelope with the Will and he signed as having received it in a book, which records Wills, prepared by the firm at which she is a partner. The duplicate Will was placed in a cabinet at her office.
- [44] After Mr. Jones death, the 1<sup>st</sup> Defendant, Mr. Horace Kirlew, delivered to her the sealed envelope that she said Mr Jones had received. Mrs. Robinson-Foster said that she opened the envelope and read the Will she had prepared after Mr. Jones' funeral on Saturday, January 13 2018.
- [45] She was also permitted to amplify the evidence contained in her Affidavit.
- [46] Like Ms East before her, she also agreed that the last page of the alleged Last Will and Testament of Rupert Jones that Ms East had examined was not a copy of the last page of the alleged Will provided by her.
- [47] Her explanation was that the one examined by Ms. East was a copy of the Original Will whilst the one presented by her was the Duplicate Will and they both were signed on the same day.
- [48] She reasoned that the signature on the Will may be inconsistent with Mr Jones' usual signature, as when he started to sign the Original Will he paused and asked whether he should use his usual signature or sign as typed and she told him to sign as typed. The Will exhibited by Ms East was signed first. With respect to the Duplicate, he signed the Rupert Anthony Jones straight, without stopping to ask or to do anything.
- [49] The page of a Wills Book from her Firm in which Mr Jones had signed was admitted into evidence (**Exhibit 3**) as well as a copy of the Duplicate Will (**Exhibit 4**).

- [50] Mrs. Robinson Foster was extensively cross-examined. She admitted that Mr Jones signed as well as dated the Duplicate copy of the Will and that he wrote the entry in the Wills book, which was exhibited. Consistent with Ms East's testimony, she also said that the signature in the Wills Book is his usual signature.
- [51] She said she was not sure whether the same pen was used to date the Wills and to sign them, but that the same pen would have been used to sign the Original and the Duplicate Will. When asked if it would be unusual to use one pen to write the date and, put it down and pick up another to write the name, she said it could happen because there are times that the date is the last thing to go in because the witness signs before the document is dated.
- [52] She was also questioned about whether there was anywhere on the page that was signed in the Book that records Wills, that there was any indication that Mr Jones was signing in relation to a Will. She said no. She said she could not recall if Mr Jones signed or dated first, but it is usual for her to have the person sign then date.
- [53] There were no questions in re-examination.
- [54] Both Queens Counsel and Counsel filed skeleton arguments but expanded orally on their submissions. I will attempt to summarize each and hope not to do them any disservice.
- [55] Queens Counsel on behalf of the Defendants made the following submissions:
- i. The main issue he identified was whether Mr. Jones was the one who wrote his name at the foot of the alleged Last Will and Testament
  - ii. He submitted that Ms East's focus was to ascertain whether the signature on the Will bears an authentic signature of Mr Rupert Anthony Jones. Pursuant to those instructions, she was given examples of the usual signatures of Mr Jones, none of his handwriting.

This in light of her evidence that she offers a number of services to include confirming the authenticity of signatures and confirming handwriting.

- iii. Mrs. Robinson Foster had said that it was when Mr. Jones was signing the Original Will that he stopped to make an enquiry after he had begun signing the Will and that there is a strange “J” that appears on the original but not the Duplicate Will. This he submits, confirms what Mrs. Foster had said.
- iv. Ms. East supports the Defence case when in describing her method of examination she agreed that in the questioned document, she found no elements of tracing, imitation, disguise, duplication or any other elements that are intended to deceive. That if Mrs. Robinson and the Defendants were attempting to deceive why would they have produced voluntarily the relevant page of the Will Book (with the deceased usual signature).
- v. Ms East also supports the evidence of Mrs. Robinson Foster when she admits that the signature in the Wills Book is an authentic signature of Mr Jones.
- vi. In relation to the issue of the pen or pens used, Mr Hylton proffered that Mrs. Robinson Foster offered a reasonable explanation as to what could have happened though she could not recall which pen was used to do what. The nurses could have brought their own pens.

**[56]** For her part, Ms. Johnson on behalf of the Claimant made the following submissions:

- i. Mrs. Robinson Foster’s evidence is not to be relied on for the following reasons:

- a) The purported handwriting on the Will and in the Wills Book are different and both do not belong to Mr Jones.
  - b) The handwriting differs on the Will in relation to the date and the writing of the name.
  - c) Ms. East said a different handwriting instrument was used to write the date and where the signature purports to be.
  - d) Why would a professional such as Mrs Robinson instruct a client to not use their usual signature when executing a very important document such as a Will? It doesn't ring true.
- ii. Court should accept Ms. East's evidence that the signature on the Will is not an authentic one. Further, that the Will was not dated and signed by the same person.

## **ISSUES**

**[57]** The issues to be determined by the Court are

- i. Whether the writing on the document purporting to be the Last Will and Testament of Rupert Anthony Jones was done by the said Rupert Anthony Jones.
- ii. Given that the Defence has admitted that the writing is not the usual signature of the deceased, whether the writing satisfies the requirement of Section 6 of the Wills Act

## **LAW AND ANALYSIS**

**[58]** The first question for the Court is whether Mr Rupert Anthony Jones wrote his name on the alleged Last Will and Testament.

- [59]** The Claimant's evidence was confined to whether the signature on the Will was that of the deceased. He said that he was familiar with the deceased's signature and that the signature on the Will purporting to be that of Mr. Rupert Anthony Jones was a forgery.
- [60]** Ms. East also was focused on whether the writing at the foot of the document was the authentic signature of Mr Rupert Anthony Jones. Though she did not attach to her Report all written instructions given to her (in breach of Rule 32.13 (3) of the Civil Procedure Rules 2002), her Report indicates that she was asked to ascertain whether the signature on the questioned document (the Will) bears an authentic signature. In cross-examination, she admitted that her Report is based on the service that she was asked to provide. Ipso facto, her Report was based on whether the signature on the alleged Will was authentic. This was so though Ms. East also provides other services to include the confirmation of handwriting, as was admitted in cross-examination.
- [61]** The Defence however did not take any issue with the assertion by the Claimant and Ms East that the writing at the foot of the alleged Will was not the usual signature of Mr Rupert Anthony Jones.
- [62]** What the defence witness, Mrs. Robinson Foster explained, was that having begun to execute the document, Mr. Jones paused and asked her whether he should use his usual signature or sign as typed on the document and she instructed him to sign as typed.
- [63]** The Claimant however has asked the Court not to rely on Mrs. Foster's evidence at all. Having reviewed Mrs Foster's evidence, she answered all of the questions asked of her in cross-examination promptly and clearly and she did not exaggerate her responses. She remained forthright throughout the time she was in the witness box and did not seek to avoid answering any of the searching questions asked of her.

- [64]** Looking back at her cross-examination there were two areas that her response was that she could not recall. Those were in relation to whether Mr. Jones signed or dated the Will first and the second was whether the same pen was used to sign and date the Will. I did not find that she was discredited. I found them to be genuine cases of forgetfulness. In any event, they were immaterial to the issues to be resolved.
- [65]** When it was suggested to her that it would be unusual to use one pen to write a date and then another to write a name she said that it could happen as there were times when the date is the last thing to be placed on the document, as the witnesses would usually sign before the document is dated. The Court finds this to be a reasonable and credible explanation.
- [66]** The Claimant also attacked Mrs. Foster's evidence regarding her instruction to Mr Jones to write rather than sign his name. Counsel asked why a professional lawyer would do so given how important a Will was. However, it may very well be because of her training and her interpretation of the relevant section of the Wills Act why she did so. Learned Queens Counsel has submitted that it is quite acceptable. The Court will share its reasoning shortly but will say at this juncture that it finds nothing incredible or unreasonable with those instructions.
- [67]** Mrs. Robinson Foster was not a beneficiary in the alleged Will. Her answers and explanations were plausible, and her tone, facial expressions and body language contributed to the Court assessing her as an impressive witness.
- [68]** I am mindful of the fact that an expert's evidence is not to be lightly rejected. However, Ms East's evidence could not assist the Court in determining the main issue before it, that is, whether Mr Rupert Anthony Jones wrote his name on the alleged Last Will and Testament. This is so because the parties were agreed that the signature on the document was not the usual signature of Mr. Rupert Anthony Jones yet

- i. she was asked to make an assessment of the writing on the document to see whether it bears an authentic **signature** and in doing so she made findings of the signature on the questioned document after comparing it with the known **signature** of the deceased; and
- ii. She was never tasked to analyze and compare Mr. Jones usual handwriting with that on the document , though that's a service that she offers; and
- iii. One of her findings was that there were no signatures given to her for comparison where the name of the deceased is written in full.

**[69]** Additionally, though Ms. East found several characteristics in the handwriting of Naomi Thompson (one of the witnesses to the alleged Will), in the questioned signature, she cannot and did not say that it was written by Naomi Thompson because that was not within her charge.

**[70]** Therefore, when Mrs. Robinson Foster gave evidence that she saw Mr Rupert Anthony Jones writing his name on the document, the Court accepts her evidence and finds that evidence to be truthful.

**[71]** In relation to the second issue, the Court first looked at Section 6 of the Wills Act which provides :

*“No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person, in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and subscribe the will in presence of the testator, but no form of attestation shall be necessary. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within this Act, if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent, on the*

*face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will... “*

- [72] It appears therefore, at a glance, that it is the signature that is to be attached at the foot of the document, but where it states “or by some other person, in his presence and by his direction” this gives the impression that something other than his signature may be acceptable if done in the testator’s presence and under his direction.
- [73] So one may argue, if someone else can sign, why cannot something other than his signature, such as his name, if made by the testator, be accepted?
- [74] The Defendant cited some authorities on the issue.
- [75] In **Weatherhill v Pearce** [1995] 2 All ER 492, The testatrix prepared a Will on a printed Will form. On the first page, under the printed heading 'The Will Of', she wrote her name in capital letters, followed by the date. On the inside fold she wrote out her Will in her own handwriting, ending with the clause 'Signed by the said testator Doris Weatherhill in the presence of us present at the same time who at her request in her presence and in the presence of each other have subscribed our names as witnesses'; she made no further separate signature. The testatrix then asked two friends to witness her Will and they both signed their names after the attestation clause.
- [76] After the testatrix's death, one witness gave evidence that the testatrix had produced the completed Will and asked her to sign it and that she had done so in the presence of the testatrix but not in the presence of the other witness; the latter's evidence was to the effect that she had signed in the presence of the testatrix but could not recall whether the other witness had been present at that time. The plaintiff, who was the testatrix's son and chief beneficiary, applied to the court to pronounce the Will valid. The defendant daughter opposed the application, contending that the will was not validly executed according to the requirements of

Section 9a of the Wills Act 1837, in that the presence of the testatrix's name in the attestation clause did not amount to a signature, or if it did, that the signature had not been 'made or acknowledged' in the presence of two witnesses present at the same time, or alternatively that the document had not been intended by the deceased as her Will.

- [77] The Court opined that where a testator wrote his name in his own handwriting in the attestation clause and the evidence indicated that, by doing so, he had intended to give effect to the document as his Will, the handwritten name was a sufficient signature for the purposes of Section 9 of the 1837 Act. Although the testator had not drawn the two attesting witnesses' attention to that signature, the fact that he had offered the document to them as a Will for signature was sufficient to constitute an acknowledgment of his signature to the witnesses under s 9.
- [78] **In the Estate of Cook (deceased); Murison v Cook and Another** [1960] 1All ER 689, the same Section 9 was under review. A testatrix drew up a Will which was duly attested by two competent witnesses . She commenced the document "I, Emmie Cook ... declare this to be my last Will ... " and, after making certain dispositions of her property, ended as follows "Please Leslie be kind to Dot. Your loving mother". Leslie was her son and "Dot" referred to one of her daughters. There was an application to the court to have probate of the will pronounced in solemn form, notwithstanding that it was not signed in the testatrix' own name.
- [79] The court ruled that the Will had been properly executed and would be admitted to probate as the words used by the testatrix in signing the Will were meant to represent her name.
- [80] Both cases were concerned with Section 9 of Wills Act in the UK, which is on all fours with section 6 of our Wills Act. I find both authorities to be persuasive and agree with the findings in both cases.

**[81]** Therefore, this court is of the opinion that it is not repugnant to Section 6 of our Wills Act, for a testator to write his/her name at the foot of a Will so long as the document was intended by the testator to be his Will.

**[82]** The evidence from Mrs. Foster is that in or around October 2016, she was contacted by Mr. Horace Kirlew, the 1<sup>st</sup> Defendant, and one of the applicants for the Grant of Probate, who told her that Mr Jones wished her to come to the hospital to get instructions for a Will. She said that an appointment was made and she went and took written instructions from Mr. Jones on the date agreed, prepared the Will and the next day, the 27<sup>th</sup> October, 2016, returned to the hospital to see Mr. Jones, with the draft Will. That further, she read over the document to Mr. Jones and he confirmed that the content was correct. She went on to give evidence about its execution and that she even gave the Original Will to Mr. Jones who signed for it. His signature in the Wills Book was agreed by both sides to be his usual signature.

**[83]** The court has found Mrs. Foster to be a truthful witness and finds that in the circumstances of the testator calling her to take instructions for a Will, she taking those instructions, and then him writing his name thereon and the due execution by the two witnesses, the Court does not doubt that the document alleged to be the Last Will and Testament of Mr Rupert Anthony Jones was intended by him to be his Last Will and Testament.

**[84]** The Claimant had also alleged that the Will was a forgery. Section 3 of the Forgery Act reads as follows:

‘ 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.

**[85]** The Court has found that it is the testator who wrote his name at the foot of the document and it cannot be said that it is a false document. Furthermore, the evidence of Ms. East had also weakened the Claimants case when she admitted

under cross-examination that in the questioned document (the Will), she found no elements of tracing, imitation disguise, duplication or any other elements that are intended to deceive.

## **CONCLUSION**

**[86]** I am satisfied on a balance of probabilities and having seen and heard the witnesses, that the now deceased did affix his name and not his signature to a document and that the said document satisfies the requirements of Section 6 of the Wills Act and further, that the document is his Last Will and Testament, dated the 27<sup>th</sup> October 2016.

## **ORDER**

1. The Orders sought in the Fixed Date Claim Form filed on the 31<sup>st</sup> January 2019 are refused. Judgment for the Defendants. Cost to the Defendants to be agreed or taxed.

