



[2021] JMSC Civ 29

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

**PROBATE DIVISION**

**CLAIM NO. 2018P02279**

<b>BETWEEN</b>	<b>HORACE RICHARDS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>GERALDINE RAMSAY-FACEY</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Carlton Williams instructed by Williams, McKoy and Palmer for the Claimant

Althea G.M. Grant for the Defendant

Heard: December 7<sup>th</sup>, 2020 and February 19<sup>th</sup>, 2021

**Application for revocation of Grant of Letters of Administration -**

**HUTCHINSON, J**

**INTRODUCTION**

[1] The claim before me was brought against the Defendant in respect of a grant of letters of administration which was given to her in the estate of Everald Ramsay. In a fixed date claim form filed on the 10<sup>th</sup> of December 2018, supported by an affidavit, the Claimant seeks the following orders;

- i. The revocation of the Grant
- ii. The reversal/setting aside of any action and/or acquisition done and/or taken by the Defendant, in contravention of the devise under the will.
- iii. Costs to the Claimant.
- iv. Any other order as this Honourable Court deems fit.

- [2] It was noted that there was no Particulars of Claim filed in keeping with Rule 68.55(4) (a), there being no objection to the matter proceeding, I opted to treat with it as commenced in keeping with the requisite format.
- [3] The background to this Claim is found in an application for letters of administration with Will annexed which was filed by the Claimant, Mr Richards, in the estate of Everald Ramsay on the 21<sup>st</sup> of April 2015. The Claimant is the son of Mable Ramsay, the late widow of Everald Ramsay and Executor in Everald's purported Will. Mr Richards sought to make this application by virtue of his role as administrator in the estate of his mother. In the course of the application, Mr Richards was informed that a Grant of Letters of Administration had already been made to the Defendant on the 21<sup>st</sup> of October 2016, on the basis that Everald Ramsay had died intestate.
- [4] The matter was heard on the 7<sup>th</sup> of December 2020. On that date it was indicated by both Attorneys that they did not intend to cross-examine the affiants in this claim and were content with the Court coming to a decision on the basis of the evidence contained within the documents filed. This position was probed in light of the issues to be determined and the orders sought. The Attorneys maintained their position and the matter proceeded with the affidavits, exhibits and all other documents forming a part of the record being considered by the Court, after which submissions were made by respective counsel. The respective cases are summarised below.

### **CLAIMANT'S CASE**

- [5] Mr Richards stated that he was the step son of the late Everald Ramsay as his mother had gotten married to him while he was still an infant. He stated that Mr Ramsay has raised him as his son and always treated him as a child of the marriage. In respect of the estate in dispute, he said that in 1961 Mr Ramsay purchased the property at Herring Lane, Old Harbour in the parish of St Catherine from Sarah Walters and this property became their family home until the time of his stepfather's death on the 21<sup>st</sup> of December 2006. He said that following the

death of his stepfather he and his mother remained in occupation until her death on the 27<sup>th</sup> of April 2009 when he resided alone on the property. He denied that the property had been purchased by Percival Ramsay, the father of Everald Ramsay and the Defendant and asserted that the Defendant had no rights or interests in same. He stated that it was not true that Percival had informed Doreen Martin that the property had been purchased by him as at the time of Percival's death Doreen was still an infant.

- [6] He stated that in the event Percival Ramsay had been the purchaser of the property, Everald Ramsay had become the owner by way of adverse possession having resided there in exclusive and undisturbed possession prior to the death of Percival in 1983 and until his own passing in 2006 and had acquired the relevant rights of ownership which he sought to dispose of in his Will.
- [7] Mr Richards denied that his stepfather had suffered any illness that would have rendered him incapable of giving instructions for the preparation of a will or of signing same. He denied the assertions of the Defendant and her niece Doreen Martin that the latter had resided at the house of the deceased from 2003 and had been his main caregiver. He stated that there was no need for such an arrangement as his mother had still been alive and in a position to care for his stepfather. He contended that while his stepfather had suffered a brief bout of illness he had fully recovered from this prior to the making of his will. He acknowledged that Annmarie, the sister of Doreen, had resided on the property but stated that this was in the capacity of a tenant as she had rented a structure on the land which she operated as a bar but it had subsequently been closed down and the location given to Joseph Brown to operate as a Church.
- [8] He insisted that the will was valid as it had been prepared at his stepfather's instructions and the attesting witnesses were well known to him. He stated that it was Everald who had granted Joseph Brown permission to operate the church on his property and Felecita Brown is the Pastor's relative. He denied that the Will was a fraudulent document and insisted that it reflected the intention of his

stepfather to leave the property to his mother for her lifetime and on her death to him absolutely.

- [9] Mr Richards relied on the joint affidavit of Joseph and Felecita Brown, the attesting witnesses, in which they deponed to being present together for the signing of this will by the deceased. They stated that the document was read over by the deceased in their presence after which he signed and they signed as well.

### **DEFENDANT'S CASE**

- [10] It was Mrs. Ramsay-Facey's evidence that she made an application for a Grant of Letters of Administration as her brother had made no provision for the disposal of his estate and she felt compelled to act in this regard as over five years had passed since his death. She denied that he owned the property at Herring Lane and insisted that he had been given permission by their father Percival Ramsay to reside there after he had fallen on hard times and had no place of his own. She stated that her brother had never owned any property and had to be assisted by her and their father as his earnings were meagre.
- [11] She stated that she had shared a close relationship with her brother and his widow and both would have advised her if a Will existed. She refuted the existence of any testamentary document and asserted that her brother had suffered cerebral haemorrhage as well as a stroke and would have been deprived of the cognitive and physical ability to make any such document.
- [12] Mrs. Ramsay-Facey insisted that the property at Herring Lane had always been the family home for the off-springs of Percival Ramsay as a result of which she would stay there from time to time. She said that Mr Richards would have been aware of her application for the grant of letters of administration as a representative from LAMP would have made contact with him in his capacity as a resident on the property. She insisted that the Claimant never mentioned a Will and had even indicated that he had no interest in the property

[13] Her evidence was supported by that of her niece Doreen Martin, the daughter of her sister, who stated that no will could have been made without her knowledge as she had been the main caregiver for the deceased. She denied that the attesting witnesses had ever attended the home for the purpose of signing same and she insisted that the deceased never travelled outside of the home without her being present. She stated that the Claimant had never been treated as a son by the deceased and explained his residence at the property as being pursuant to permission granted to him by her aunt. Ms Martin insisted that she had been informed by Percival (her grandfather) that he had purchased the property at Herring Lane. She also stated that her sister had resided there as Everal's caregiver prior to her assuming this role.

## **SUBMISSIONS**

[14] Mr Williams submitted that the issue to be determined by the Court was whether Everal Ramsay had left a will as a result of which the Grant of Administration should then be revoked. In support of the existence and validity of the will he highlighted the evidence of the attesting witnesses and stated that the veracity of this account had not been rebutted by any medical evidence produced by the Defendant in support of her contention that the Deceased was unable to make or sign a will.

[15] He made reference to the sole asset identified in the Will which the Defendant insisted had belonged to her father and asked the Court to note that no documentary proof has been provided that the property did not belong to Everal Ramsay. Counsel argued that even if Everal Ramsay had not been the purchaser he had become the owner by his exclusive and undisturbed possession of same for over 13 years.

[16] He questioned the true motives of the Defendant and submitted that she did not need to administer the estate of Everal Ramsay as on her account he possessed no assets. He contended that if her true intention had been to distribute the estate

of Percival Ramsay among the prospective beneficiaries, her application should have been made in respect of his estate. Mr Williams argued that the Defendant's position where the Claimant was concerned was based on a faulty legal premise as while she had sought to exclude him from the process, Everald's interest in the property would have passed to his wife on his death and on her death this would have passed to her son. He asked the Court to act to revoke the grant as there had been no meddling in the estate up to this point.

**[17]** In her submissions Ms Grant posited that there were six legal issues which fell to be considered by the Court and she outlined these as follows;

- a. Should the Claimant be granted the cancellation of the grant made to the Defendant?
- b. Was the Defendant entitled in law to make an application for a grant of administration in the estate of Everald Ramsay?
- c. Is the Court entitled to determine if the purported last will and testament of Everald Ramsay is authentic bearing in mind all the circumstances?
- d. What are the implications if the will is not deemed to be authentic?
- e. If the will is not found to be authentic would the grant of administration be deemed valid?
- f. If the grant of administration is valid, what interest if any would the Claimant have in Herring Lane?

**[18]** She asked the Court to accept the evidence of the Defendant and her witness and highlighted that no documentary proof had been presented by the Claimant to show that the property had been owned by Everald Ramsay. She relied on Section 4 of The Intestate's Estate and Property Charges Act as laying the foundation on which Mrs. Ramsay-Facey had applied for and obtained the grant of administration. She

also made reference to the Wills Act in respect of what factors should be considered by the Court to determine whether the document was in fact valid.

## **ANALYSIS AND DISCUSSION**

[19] In examining this application, I took special note of the provisions of Section 4 of the Act which reads as follows;

*4.-(1) The residuary estate of an intestate shall be distributed in the manner or held on the trusts specified in the following Table of Distribution-*

*Table of Distribution*

*Item 4. Other Eligible Relatives:*

***(1) If the Intestate leaves no surviving spouse., issue or parents, the residuary estate shall devolve on the other relatives entitled under this Item who survive the intestate, in the following order and manner, namely-***

***(a) firstly, be held under the statutory trusts for the brothers and sisters of the whole blood of the intestate but if no person takes an absolutely vested interest under such trust then***

*(b) secondly, be held under the statutory trusts for the brothers and sisters of the half blood of the estate; but if no person takes an absolutely vested interest under such trusts;(emphasis added)*

[20] The affidavit of Mrs Ramsay-Facey as well as her Oath of Administrator both outline that Everald Ramsay had been her sibling. As such she would properly fall within the category of individuals outlined at Item 4(1) (a) who would have been entitled to make an application for a grant. At the time when the application had been made, Mable Ramsay had passed away and the Claimant would not have been qualified to apply as he was not an 'issue' or lawful descendant of Everald Ramsay.

[21] The issues which arise for consideration could be described as two sides of the same coin, as a determination has to be made whether the purported will satisfies the requirement of the Wills Act in order to justify the revocation of the grant. In coming to this conclusion, it is also necessary to decide whether the evidence presented by the Defendant reveals that the document is in fact fraudulent and should be rejected by the Court.

[22] The relevant requirements to establish the validity of a Will are outlined at Section 6 of the Wills Act which states as follows;

***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... but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made. (emphasis supplied)*

[23] In the local authority of ***Reginald Ramsaran v. Linton Ramshai and others (1989) 26 J.L.R. 92*** which dealt with an application to declare a will invalid, Edwards J outlined the following legal principles;

1. Where a will contains a proper attestation clause, there is a presumption of due execution of the will. This presumption can be rebutted by evidence of the attesting witnesses or otherwise.
2. Attestation means that the document is executed in the presence of a witness who signs by way of attesting the execution.
3. A will can be proved by calling at least one of the attesting witnesses.
4. Although the law is that the signature of the testator must be made or acknowledged in the presence of the two witnesses and the witnesses must attest and subscribe the will in the presence of the testator; it is not essential for the attesting witnesses to sign in the presence of each other although it is usual to do so.
5. Each witness must be able to say with truth that he has seen the testator sign the document though it is not necessary that he should know that it is the testator's will. There is no sufficient acknowledgment

unless the witness either saw or had the opportunity of seeing the signature.

- [24]** Applying these principles to the circumstances before me, I note that there is evidence of a proper attestation clause on the face of the purported will. Additionally, there is a joint affidavit from the attesting witnesses in which they outlined witnessing the testator sign the document which they knew for a fact was his Will. Ordinarily, this would have been sufficient to raise the presumption that the Will was properly executed. It was noted by Edwards J however, that this presumption can be rebutted by an attesting witness or other evidence and in this regard, the Defendant has sought to rely on her assertions of the physical and mental decline of the deceased.
- [25]** In assessing this evidence, I noted that no medical evidence has been presented in support of this alleged incapacity. This was of great significance in circumstances where Ms. Martin, his alleged caregiver, was able to provide the name of the individual who she asserted had been the deceased's attending physician. Additionally, there was no evidence provided whether by her or the Defendant, explaining the absence of a medical report in respect of Mr. Ramsay. In spite of the passage of time, I did not believe that it would have been unexpected or unreasonable for such evidence to be procured presented in order to rebut the veracity of the affidavit of due execution.
- [26]** While I recognised that the Claimant bears the burden of proving this claim, I also had a number of questions in respect of the reliability of the Defendant's evidence. I noted that her affidavits were contradicted in several material respects by the contents of her Oath. She asserted in her affidavit that it was not true that the deceased had made a will and highlighted that there was no need for him to do so as he owned no assets and had been a man of impecunious means who had to be assisted by her. At paragraph 15 of her Oath which was filed on the 11<sup>th</sup> of April 2012, she stated that although the deceased had died leaving no personalty, he

had left realty which was valued at JMD \$1 million and had a gross annual value of JMD\$100,000.

- [27]** In her supplemental Oath filed on the 1<sup>st</sup> of May 2013 in addressing a requisition whether there were any possible beneficiaries under the intestacy of her brother, she stated at paragraph 5 that ‘the deceased was survived by his wife Mable Ramsay who died on the 27<sup>th</sup> of April 2009 leaving no issue or other beneficiaries...’. This assertion was clearly not true as she was always aware of this Claimant.
- [28]** In circumstances where she has raised questions in respect of the mental and physical capacity of the deceased with no medical evidence to support this, it is arguable that this was done purely to prevent the Claimant obtaining an interest in the property. Additionally, the veracity of her assertions in respect of the health of Everald Ramsay has been greatly undermined by contents of the documents provided by her.
- [29]** I have considered whether her case can be rehabilitated by the evidence of Ms. Doreen Martin, a witness who it must be acknowledged has a benefit to gain if the grant were to be upheld. I carefully considered the account of Ms. Martin and I was also left with a number of unanswered questions.
- [30]** It was Ms. Martin’s evidence that she had moved in with her uncle in order to care for him. This was refuted by the Claimant who asserted that there was no need for any such arrangement as his mother was present in the home and in a position to care for his stepfather. It was never denied by Ms. Martin or the Defendant that Mable Ramsay lived with her husband until his passing. Neither was it denied that she was capable of taking care of him and was in fact the person who did so. There was no evidence provided by Ms Martin which explained why she was called on to play this role, how she was paid, by whom or how she was able to afford the care and medication needed for such a gravely ill individual. In determining what weight

to give her account, I found that it lacked credibility and failed to provide the critical support needed in respect of the Defendant's case.

**[31]** In the text Parry & Kerridge -The Law of Succession Twelfth Edition at pp. 466-467 it was noted that a Grant of Administration may be revoked if it was wrongly made or a Will is discovered after a Grant. It was also noted that a Grant is wrongly made if it was obtained as a result of false statements by the Grantee, whether made fraudulently or in ignorance of the truth. Having reviewed the evidence in this matter, it is clear that there were representations made by Defendant which were untrue. This in and of itself provides a proper basis for the revocation of the Grant.

**[32]** In the instant matter, there is a purported Will in which the deceased had sought to dispose of his estate. Having reviewed the 'Will', the evidence of the attesting witnesses and that of the Claimant himself, I am satisfied on a balance of probabilities that the document satisfies Section 6 of the Wills Act as well as the established legal principles. Accordingly, I make the following orders;

- a. The grant of administration made in the estate of Everald Ramsay on the 21<sup>st</sup> of October 2016 is revoked forthwith.
- b. The reversal/setting aside of Any action and/or acquisition done and/or taken by the Defendant, in contravention of the devise under the will is reversed/set aside with immediate effect.
- c. Costs are awarded to the Claimant to be taxed if not agreed.
- d. Claimant's Attorney to prepare, file and serve order herein.