



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE Civil DIVISION

CLAIM NO. 2017P02055

BETWEEN **OWEN RUSSELL**
Executor named under Last Will
and testament of Pearline Agatha
Richardson-Thomas dated 27.5.09 **1ST CLAIMANT**

And **PATRICIA ELLIS**
Executor named under Last Will and
Testament of Pearline Agatha Richardson-
Thomas dated 27.5.09 **2ND CLAIMANT**

And **MARLENE DEMETRIUS WHITE**
Executor named under Last Will and
Testament of Pearline Agatha Richardson-
Thomas dated 27.5.09 **3RD CLAIMANT**

And **TIFFANY THOMAS** **DEFENDANT**

Whether later Will was validly executed and revoked earlier will – Expert evidence that later Will was a forgery.

Mrs. Martina Edwards-Shelton and Mr. Kemar Sutherland instructed by Shelards Law

Mr. Gavin Goffe and Mr. Jovan Bowes instructed by Myers, Fletcher & Gordon

Heard: December 4 – 8, 2023 & April 19, 2024

In Chambers

MILWOOD MOORE J. Ag.

The Court delivered its oral decision on April 19, 2024 and promised to make its reasons available in writing. The Court extends sincere apologies for the delay and too, its

profound gratitude for the helpful submissions provided by the Attorneys for both sides. In fulfillment of its promise, these are the reasons for the decision rendered in this matter.

Background

[1] The testatrix Pearlline Agatha Richardson-Thomas, affectionately known as “,” was by all accounts, an enterprising, hardworking and resourceful entrepreneur, who, over the course of many years, sold various goods locally and overseas. No doubt, as testament to this, the testatrix left behind a number of real estate properties, the distribution of which raises a contest as to the validity of two purported wills. The first in time, emanates from the Claimants who are the named executors under the will dated May 27, 2009 (*the earlier will*). The 1st Claimant, Mr. Owen Russell in particular, asserts his general knowledge of the origin of this will from the testatrix, with whom he testified to having shared a very close friendship, described “as *though they were brother and sister.*” Living and operating her business in Spanish Town, their relationship deepened over the years, as it was in the same community of Willowdene that the 1st Claimant operated his gas station. The testatrix entrusted many of her personal financial dealings to Mr. Russell. The Court heard evidence that almost routinely upon her return from business trips overseas, Miss Pearl would leave sums of foreign currency with the 1st Claimant for safe keeping. She sought his advice and involvement in a number of real estate transactions and in later years, placed his name on her account with words to the effect that “*if mi dead, bury me.*”

[2] According to the 1st Claimant, in 2009, the testatrix expressed the desire to make a will and he assisted her by introducing her to his Attorneys Lancelot Clarke & Co., having been well acquainted with the firm from when it was originally operated by the late Lancelot Clarke, Snr. This will he says, was first seen by him when he returned to his office, to find an envelope on his desk, which his assistant advised had been left for him by “”. On opening the envelope, he observed the contents and immediately deposited the document in his safe, never having any exchange with Miss Pearl regarding the will.

- [3] With a life struck by tragedy, the testatrix's two sons had been murdered barely months apart, when her granddaughter the Defendant, Tiffany Thomas, was only ten years of age. The Defendant's was one of those who had been murdered. When the testatrix succumbed to illness in February of 2015, she was survived by her grandchildren and a few of her siblings.
- [4] On May 17, 2016, the Claimants applied for a grant of probate of the of the earlier will. Their application was however stalled by the entry of a caution by the Defendant on October 24, 2016.
- [5] The Defendant has propounded the second will in the contest, dated January 8, 2015 (the later will). According to her account, the testatrix who had been ill with chikungunya for some time, had advised her that she wanted to put her house in order and that she had invited a Justice of the Peace to her home the following day, when she wanted the Defendant to also attend. As such on January 8, 2015, she visited her grandmother, accompanied by her friend, Daniel Henry, who gave evidence. While present, Miss Pearl signed her will, which was witnessed by Ms. Henry and Mr. Ricardo Septon Bennett, who also testified as attesting witness.
- [6] On June 16, 2017, the Defendant, filed a Notice of Application for Directions pursuant to Rules 68.40. In particular, that application sought:
- (i). Directions as to whether the will dated, January 8, 2015 is valid;
 - (ii). Directions as to whether the January 8, 2015 will revokes the will of May 27, 2009;
 - (iii). Directions for pronouncement of the will of the late Pearline Agatha Richard-Thomas, dated January 8, 2015 in solemn form.
- [7] On November 8, 2017, the Claimants filed a Fixed Date Claim Form, accompanied by Particulars of Claim, in which they sought:

- (i) A declaration that the paper writing dated January 8, 2015 purporting to be the Last Will & Testament of Pearlina Agatha Richardson-Thomas is invalid and void;
- (ii). A declaration that the Last Will & Testament dated 25th, May 2009, is valid;
- (iii). That probate of the Last Will and Testament dated 25th, May 2009, of Pearlina Agatha Richardson-Thomas, the testatrix be granted to the executors therein Owen Russell, Patricia Ellis and Marlene Demetrius White in solemn form.

[8] In addition to the 1st and 3rd Claimants who testified, the Claimants relied on the evidence of Alrick Williams, Handwriting Expert Beverley East and Private Investigator Ronald Campbell. Ms. East gave evidence that in her opinion, the later will, was not signed by the same person who signed other documents, which were known to have been signed by the testatrix. Mr. Ronald Campbell, had been retained to investigate the addresses of two witnesses who had purportedly witnessed the later will as also whether they were speaking the truth. While not managing to locate Ms. Henry, Mr. Campbell made contact with Mr. Ricardo Septon Bennett by phone. In their exchange, the witness testified that after he told Mr. Bennett of two wills with two different signatures, the latter immediately made utterances denying any wrongdoing and stating that he did not see the testatrix sign but was present at the time. Mr. Alrick Williams, testified that on the very day of January 8, 2015, at her request, he picked up Miss Pearl from her home in Spanish Town and took her to Clarendon, where she remained until in the evening when he took her back to her home.

[9] **The Issues to be determined by the Court**

1. Whether the Last Will and Testament of Pearlina Agatha Richardson-Thomas, dated 8th January, 2015 was duly signed by her in the presence of two witnesses.
2. Whether the will dated January 8, 2015 was valid and therefore revoked the will of May 27, 2009.

The Law

- [10] Section 6 of the Wills Act provides that a Will is not valid unless:
- (a) It is in writing and signed on the foot thereof by the testator or some other person in his presence and by his direction; and
 - (b) Such signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
 - (c) The witnesses shall attest and subscribe the will in the presence of the testator.
- [11] It is well established that once a will has an attestation clause, this raises a presumption of due execution. **Ramsaran v Ramsahai & Others (1989) 26 JLR 92.**
- [12] It is an equally well entrenched principle that in order to prove that a will was not duly executed requires the strongest evidence. As stated in **Wright v Rogers (1869) LR PD 678,**
- “The Court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail in the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof. Where both the witnesses, however, swear that the will was not duly executed, and there is no evidence the other way, there is no footing for the Court to affirm that the will was duly executed.”
- [13] Where there is evidence that the will was made in ‘suspicious circumstances,’ the presumption is spent and the party propounding the will must prove testamentary capacity and knowledge of the contents of the will on the normal civil standard. **Vout v Hay [1995] 2 SCR paras. 26 – 27 states:**

“Suspicious circumstances in any of the three categories to which I refer above will affect the burden of proof with respect to knowledge and approval... *Although the propounder of the will has the legal burden with respect to due execution, knowledge and approval, and testamentary capacity*, the propounder is aided by a rebuttable presumption. Upon proof that the will was duly executed with the requisite formalities, after having been read over to or by a testator who appeared to understand it, it will generally be presumed that the testator knew and approved of the contents and had the necessary testamentary capacity.

Where suspicious circumstances are present, then the presumption is spent and the propounder of the will reassumes the legal burden of proving knowledge and approval.”

According to ***Yen Estate v Chan, 2013 BCCA 423***, where there are no suspicious circumstances, surrounding the execution of the will and upon proof that the testator has signed the will, the Court is entitled to rely on the presumptions of execution, knowledge and approval.

- [14] The case of ***Paul Duncanson v Derrick Sharpe and Marva Sharpe [2023] JMsc Civ 34*** confirms that the Court is open to accept the evidence of a witness which conflicts the findings of an expert.
- [15] The authorities show that if the handwriting expert concludes that the signature on the will is a forgery, it would necessarily mean that the attesting witnesses would have been guilty of fraud. The Court should be very slow to come to that conclusion. In ***Fuller v Strom [2001] EWCA Civ 1879***, it was held that due to the gravity of allegations of fraud, the evidence required to prove fraud must be particularly cogent.
- [16] Fraud is a very serious allegation and although the degree of probability required to prove such allegation is still on a preponderance of probabilities in a civil claim, such preponderance will be a higher standard than in other civil causes of action

such as negligence, ***Ervin McLeggan v Daphne Scarlett and the Registrar of Titles [2017] JMSC Civ 115 and Paul Griffith v Claude Griffith [2017] JMSC Civ 136.***

- [17] In Halsbury's laws of England Volume 12 (2009) 5th Edition paragraphs 1109 – 1836 explained the standard of proof thus:

“... 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.”

- [18] The Courts have held that when considering the signature of any individual, the effects of illness should be taken into consideration. ***Paul Duncanson v Derrick Sharpe and Marva Sharpe [2023] JMSC Civ 34*** states:

‘One of her findings is that the signature lacked speed and fluidity. That could hardly be unusual in an instance where someone is ill and from all indications at the time bedridden. Because of the failure to take into account the effects of illness, it is probable that the other matters raised from no. 1 through 9 in her findings could be impacted by or accounted for due to changes in an individual physical strength. We may never know with any degree of certainty whether that is so. The position from which one writes as well as the surface on which the writing/signing takes place could also impact the appearance of the signature. It is not evident that those factors were considered.’

- [19] The case of ***Gill v Woodall [2010] EWCA Civ 1430*** recognized that

‘Wills frequently give rise to feelings of disappointment or worse on the part of relatives

and other would be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.’ (emphasis added)

THE CASE FOR THE CLAIMANTS

Expert Evidence – Ms. Beverley East

- [20] Ms. Beverley East gave evidence that she has practiced the science of forensic document examination for twenty-five years, over which time she has worked on a number of cases involving a variety of handwriting identification such as verifying the authenticity of signatures and comments for fraud and malpractice in relation to checks, wills, land transfers, contracts and medical records. She has studied and was trained in the UK and USA and is qualified through world-renowned examiner Felix Klein in New York.
- [21] Ms. East concluded that the later will was not signed by the testatrix, based on her analysis of habitual patterns identified from documents containing known signatures of the testatrix.
- [22] Miss East’s’ report found that there were variations with the known signature of the testatrix from seven documents known to have been signed by the testatrix over a period ranging from as early as 1991 to 2012. In assessing the known signatures against the signature found at the foot of the 2015 paper writing, Miss East

observed what she characterized as fourteen significant discrepancies between the known signatures and that on the paper writing. These included false tremors, uneven stroke formations in the opposite direction from the testatrix's usual handwriting patterns and pen lifts in areas uncommon to the known signatures. In her conclusion, Miss East stated that these inconsistencies are too many and too varied to be accounted for by natural variations due to age, health and other characteristics of the testatrix.

[23] Having considered whether the signature on the later will was that of the testatrix, Ms. East presented her findings as to significant discrepancies in the questioned signature as follows:

- i. The signature in Q1 is drawn and shows false tremor in its formation. No other signs of tremor are evidence in any other part of the signature.
- ii. The letter **P** has an unequal proportion in its formation, when compared with the known signatures.
- iii. The **t bar** crosses downwards – while in the known signatures the t bar crosses in a horizontal upward motion.
- iv. The pen lifts throughout the signature fall in different places than the known signatures.
- v. The height of the letters in **Q1** are smaller than the known signatures.
- vi. The connections between the letters are angular in the known signatures especially between the letters m, a and s.
- vii. There is no connecting stroke after the letter o in Thomas.
- viii. In **Q1** the formation of the vowels o and a are clear with no construction of an inside loop while the known signatures has a loop inside.

- ix. The line quality is thinner and lighter in pressure than the known signatures of Mrs. Richardson-Thomas.
- x. When comparing all signatures signed on the same day, January 8, 2015 there is a switch from false tremor to smooth lines in the **S1** and **S2** signatures.
- xi. The beginning stroke on the letter P does not join the stem as is evident in the known signatures.
- xii. The model signature that was used for the simulation can be seen in graphics 14.
- xiii. The formation of the letter s completes upwards in the known signatures but horizontal in **Q1**.
- xiv. The **P** stem is firm and straight in the known signatures while the **Q1** and **S1** they are not. While **S2** forms a right slant.

[23] Ms. East testified that in addition to the signature on the will of January 8, 2015, two other signatures purportedly those of the testatrix, made on instruments of transfer on the same date are also inconsistent with her known signatures. In her findings, the signatures on the paper writing and the transfer documents exhibit several inconsistencies with the known signatures and between themselves. In the opinion of the expert, these inconsistencies are too unusual for documents said to have been signed in such close proximity of time. Ms. East states that the two signatures on the instruments of transfer were also not signed by the testatrix.

[24] During cross examination, Miss East made a number of other indications which were noted by the Court. It emerged that certain scales used by her had been disbanded for many years. In answer to whether there was an ideal number of known samples to be used for comparison, Miss East said there is an ideal number but most of these are not usually available. According to her, old reference books indicate that you should use twenty samples for comparison while some modern writers say you can use a sample size of one signature. Miss East indicated that

the level of certainty would not be affected if the analysis was done by an experienced examiner, whether the sample size is one or twenty.

[25] Miss East testified that she usually requests five or more signatures as close in time as possible. Counsel highlighted the fact that one of the known samples used in the analysis to form conclusions was a document from 1991 which the expert excluded from her graphical representation. It was suggested to her that this 1991 document which was referred to as K2 had variations when compared to all other samples and that this was the reason for its exclusion from her graphical representation. Unsurprisingly Miss East disagreed. Her explanation was that she had been placing originals with originals and that since K2 was a photocopied document, this was the reason she excluded it. The Court noted that for each variation counsel sought to highlight using K2, Miss East replied that this was from a layperson's perspective and not from the methodology which she used as an expert.

Ronald Campbell

[25] Mr. Campbell, a private investigator with over thirty years of experience, was retained by Lancelot Clarke & Co., with a view to establishing whether the alleged witnesses existed, their addresses and if they in fact, witnessed the signing of the purported 2015 will. Mr. Campbell was accepted by the Court as an expert in his field, based on his extensive years of experience.

[26] Through cross-examination, it was highlighted that while Mr. Campbell is without educational qualifications or current certification in his field, he has been registered in the past. Mr. Campbell testified that he was unable to verify an address for Ms. Danielle Henry as his visits and checks at the address stated on the purported will, revealed that she was not resident there.

[27] The situation with Mr. Bennett is quite different, as Mr. Campbell gave evidence that he visited the address provided on the will, but was told Mr. Campbell did not

reside there. It was upon a revisit the following day that Mr. Campbell received a telephone number for Mr. Campbell, from a Mr. James, which he subsequently verified with a listing from the telephone directory.

- [28] Mr. Campbell gave evidence that when he called the number he received, the person who answered, confirmed his identity to be Ricardo Septon Bennett. Upon explaining his purpose for calling and that there are two wills, one was a fraud and that the matter would be referred to a lawyer and perhaps the Fraud Squad, Mr. Campbell testified that Mr. Bennett replied “***Bwoy mi nah go lose my work because me is a medical technician and also a J.P. Mi cyan afford to get myself in trouble because mi never see when she sign. A Tiffany ask me to witness it for her.***” According to Mr. Campbell, Bennett further said that he did not see who signed the will, and that he does not know the testatrix Pearlina Agatha Richardson-Thomas well enough to speak with, but he knows Tiffany Thomas very well because she is married to his friend who is a soldier and that it was Tiffany Thomas who asked him to witness the document.

Owen Russell

- [29] The 1st Claimant gave evidence of the extremely close relationship he shared with the testatrix, spanning an estimated twenty-five years. According to Mr. Owen Russell, following the death of her two sons, he did not see any family members around. It was his evidence that he met the Defendant on a single occasion, when she visited his gas station and introduced herself to him. According to Mr. Russell, did not speak about any family member or grandchildren visiting her. Further, that sometime after the Defendant introduced herself to him at the gas station, she came back to see him there. There was nothing said as to the basis for this second visit. What is for certain, is that the 1st Claimant and the Defendant were known to each other.
- [30] Given the closeness of their relationship and the trust they reposed in each other, Mr. Russell testified that had any intention or had she in fact changed her will, she would have made this known to him. Importantly, he indicated that he and the

testatrix maintained the same brother-sister like relationship right up until the day of her death and that he had retained her will for safe-keeping over the years. He gave evidence that at no time did tell him of any intention or that she had actually changed her will.

[31] Mr. Russell explained to the Court that having been advised of the alleged second will of the testatrix, he gave his Attorneys instructions to investigate whether had in fact signed the said will in the presence of the named witnesses. Also that he is of the view that the documents dated January 8, 2015 is not the last will and testament of and that it is fraudulent and invalid.

[32] In detailing his biggest concern under the later will, Mr. Russell stated almost emotionally, that Edith Williams was the one that touched his heart. According to him, if Edith Williams had been given Willowdene, he would not have been suspicious. He emphasized that he does not know Christopher Christie and Jaunel Petagaye. These were in fact the other grandchildren of the testatrix. He stated that he only knew Tiffany Thomas and even so, emphasized that “*Not one night she stay at the house with.*”

Evidence of Alrick Williams

[33] This witness indicated in his evidence in chief, that he had known Miss Pearl for more than twenty years since he was a child living in the same community. That in around 2006, he started to assist her with transportation to run various errands such as grocery shopping, banking and other business. It was Mr. Williams' evidence that on January 7, 2015, the testatrix contacted him and asked if he had anything to do on the following day and further asked that he take her to visit a friend for the day in Clarendon. According to him, he agreed to her request and as such, picked her up from her home at about 7:30am on that morning and took her to Clarendon, where they remained for the day until they returned in the evening between 5:30 and 6:00pm. Mr. Williams testified that upon their return, they were told of an attempted break-in involving a broken window at Miss Pearl's

home. According to him, they both tended to the window and he left between 8:30 and 9:00 pm, at which time, no one else was present and notably none of the testatrix's grandchildren came to aid her on that day. There was also no mention of the 1st Claimant, who was said to have been a brother to her.

[34] Mr. Williams further revealed in his evidence in chief, that as far as he knew, the 1st Claimant was to be responsible for burying the testatrix, however the Defendant had taken over funeral arrangements with little to no consultation with the 1st Claimant.

[35] In his sworn affidavit, Mr. Williams described in detail the very close relationship between the 1st Claimant and Miss Pearl, that they had a business relationship, where the 1st Claimant managed funds on her behalf. Importantly, the witness indicated that on January 8, 2015 when he drove the testatrix to Clarendon, she told him that should anything happen to her, he along with anyone else should go to the 1st Claimant because he was in possession of her Last Will and Testament.

[36] From the start of his cross-examination, Mr. Williams denied that he was a taxi driver, noting that he only assisted and took Miss Pearl to Clarendon. He gave his occupation as being an electrician. It was established early in the cross examination, that he is cousin to the 2nd Claimant, Patricia Ellis, who did not attend the trial. When asked, he indicated that Ms. Ellis had not asked him to testify, nor did Ms. Demetrius nor the 1st Claimant. He stated that the only conversation he had with Mr. Russell to come to court, was he thought, the week before court.

[37] When asked, Mr. Williams was unable to recall when he first drove , who told him that she had died and left a second will. He agreed to having been told by someone that there was a will signed in 2015 but that they did not think signed it. He however denied being told the date of the will. When asked if he now knew the date of the will, Mr. Williams replied "***I think I saw it was the 8th of January,***

2015.” The witness further agreed that it was in the affidavit he signed, that he saw the date.

[38] When counsel asked Mr. Williams if he knew whether his cousin was in the 2015 will, he said that he did not know. When asked if he knew whether she was in the 2009 will, there was a noticeably long pause, before he replied “**Well I hear she is in the 2009 will.**” He was unable to remember who told him about that.

[39] When faced with the suggestion that he signed a statement without telling anyone the contents to put in it, Mr. Williams indicated that he gave them the statement on the phone. It was then suggested to him that he told them he is a taxi driver, to which the witness replied with visible annoyance, “**mi neva tell them mi a taxi driver.**” Mr. Williams while stating that he could not remember to whom he had given the statement, explained that “**all these questions you ah ask me over the years. I can’t remember.**”

[40] At the very end of his cross-examination, another notable area arose where it was suggested to the witness, that he was told by someone to say Mr. Russell was responsible for burying the testatrix. Mr. Williams replied “**I don’t recall when died who did fi bury her.**” Finally, it was suggested to Mr. Williams that he was told to say that if anything happen to , he should go to Ms. Russell. To this, the witness replied unequivocally “**Me and didn’t have that conversation. That part I don’t recall**”

Marlene Demetrius White

[41] One of the executors named in the earlier will the 3rd Claimant spoke of being a friend of the Miss Pearl. She indicated that she didn’t know Alrick Williams but she was aware he would take the testatrix to the doctor “and about where she want to go.” When asked if she was to have got Miss Pearl’s house belongings, the witness responded that it doesn’t matter. She went on the indicate the following when asked if she was to have got Miss Pearl’s house belongings, the witness

responded that it did not matter. She then said, **“it matter to me the grandchildren get what they are to get and justice is served.”**

[42] I now turn to the case for the defence.

CASE FOR THE DEFENCE

The Defendant’s Evidence

Tiffany Thomas

[43] Miss Thomas gave evidence that on January 8, 2015, between noon and 1:00pm, she saw the testatrix affix her signature to her will, after which Ricardo Bennett and Danielle Henry both affixed their signatures as witnesses at her grandmother’s home in Willowdene, Spanish Town. The Defendant testified during cross-examination, that the testatrix told her that *“a lot was going on with her land titles.”* As a result, she did not trust anybody and it was in light of her grandmother’s concern, that she decided to seek the assistance of an attorney and her grandmother instructed Chully Williams to prepare transfer documents.

[44] The evidence of the Defendant during cross-examination, was that she did not know who prepared her grandmother’s will. Further, that her grandmother told her she was going to put her house in order. The Defendant also disagreed that Lancelot Clarke was her grandmother’s lawyer, stating instead that she used several lawyers including Y. P. Seaton. The Defendant indicated that she thought her grandmother signed a transfer prepared by Chully Williams on January 8, 2015. She further testified to having been present when her grandmother gave Chully Williams instructions in December 2014. She indicated that Mr. Bennett was the J.P. who witnessed the signature on the transfer.

[45] She also denied that Edith Williams was the best friend of her grandmother or that she had helped her when she was sick. She states that Edith Williams was not family and that her grandmother never expressed to her any desire that Edith Williams was to get her property at Willowdene.

[46] Again under cross-examination, the Defendant denied any knowledge of her grandmother ever experiencing any break-ins at her house. Tiffany Thomas gave evidence that she got married on December 6, 2014, that grandmother wanted to support her by purchasing a cake, but this did not happen. Despite her inviting her grandmother, she could not attend as the wedding was some distance away in St. Ann and she was in pain.

Evidence of Danielle Henry

[47] Ms. Henry gave evidence that she is an I.T. Manager at Guardsman Group Ltd. and that she knew the testatrix for approximately five years, prior to her death on February 11, 2015.

[48] She testified that she journeyed to Spanish Town with the Defendant for lunch, when they stopped at the home of the testatrix. They went inside to find Mr. Bennett and the testatrix and during a visit estimated to have lasted some fifteen minutes.

[49] She swore that on January 8, 2015, she witnessed the testatrix set hand to and affix her signature to a document, which she told her was her will in preparation for her passing, in the presence of the witness and Ricardo Bennett at 39 Westminster Drive, Willowdene, Spanish Town in the parish of St. Catherine. Ms. Henry further stated that she set hand to and affixed her signature to the said document as a witness in the presence of the testatrix and Ricardo Bennett. She gave evidence that the testatrix appeared lucid and fully in control of her mental faculties in the time leading up to and during the signing of the document.

Evidence of Ricardo Bennett

[50] Mr. Bennett gave evidence that he is a psychologist, Lay Magistrate, Justice of the Peace for the parish of Saint Andrew and one of the two attesting witnesses to the

Last Will and Testament of Pearline Agatha Richardson-Thomas, who was known to him for over thirty years. Mr. Bennett indicated that he was a friend of the family and a close friend to the testatrix's late son. According to his evidence, on January 8, 2015, at the request of the testatrix, he visited her home at 39 Westminster Drive, Willowdene, Spanish Town in the parish of Saint Catherine, to witness her Last Will and Testament.

[51] He indicated that himself and the testatrix were having a conversation about how much she missed her two sons who had died and she told him she was in some pain and she suspected she had contracted chikungunya virus.

[52] According to Mr. Bennett, the testatrix took out a paper and indicated that it was her will. He saw her affix her signature to the will. Present at the time with him, at the time when the testatrix affixed her signature, were her granddaughter Tiffany Thomas and Danielle Henry, the other attesting witness. He testified that Miss Pearl then handed him the will, which he read through and informed her that anybody could have witnessed it and that it did not require a Justice of the Peace.

[53] This witness explained that he had been a family friend of Miss Pearl for some thirty years and that he had not been asked by anyone to witness the signing of her will. According to Mr. Bennett's account, he just happened to have been paying a visit to on that morning, when he was asked to sign the will and he did.

Submissions for the Claimants

[54] The Claimants ask this Court to accept the evidence of Miss Beverley East as reliable and unopposed. The Claimants highlighted that the Defence led no expert witness in order to challenge the evidence of Miss East. It is noted that the Defence in fact rested its case entirely on the veracity and strength of the two attesting witnesses who testified in this case.

- [55] The Claimants also rightly pointed out that no medical evidence was placed before this Court to substantiate the account that the testatrix had had been suffering from chikungunya virus at the time of execution of the later will.
- [56] It was further submitted that the testatrix made provision for the property contained in certificate of title listed as Exhibit 4 to be sold and for the 1st Claimant to be paid from the proceeds if any monies were owing to him. That having acknowledged that upon her death, there may be monies owing to the 1st Claimant and having made provision for repayment of such debt, it would be highly uncharacteristic of the testatrix to change her will without informing the 1st Claimant, with whom she shared a close relationship. It was regarded as even more unlikely, argued the Claimants, that the testatrix would have failed to make similar provisions in any later testamentary document she executed.
- [57] It was equally contended that it was most unlikely that the testatrix would not have informed her attorney, Mr. Lancelot Clarke Jr., who was also the 1st Claimant's attorney.
- [58] The Claimants provided detailed and helpful analysis of the evidence of the witnesses called for the defence and highlighted reasons why they ought to be treated as being unworthy of belief. All the issues raised in this regard, have been considered in the analysis undertaken by this Court.
- [59] The Claimants highlighted that the Defendant was inconsistent as to where the testatrix signed certain transfers to property which were admitted as exhibits. Indeed, the Claimants, in their further submissions reminded the Court of what was described as the "inconsistent and contradictory evidence" of the Defendant under cross-examination whereby she admitted that her grandmother signed two instruments of transfer on January 8, 2015, the same date the alleged 2015 will was signed. That the difficulty was that according to her evidence, her grandmother signed both transfers at her home and at the office of Attorney Chully

Williams. In Counsel's words "Apparently she was in both places at the same time."

[60] The Court recalls that in answer to Counsel during cross examination, as to what other document her grandmother signed at the house on January 8, 2015, the Defendant answered "*I think it was a Transfer.*"

[61] This, the Court was urged to compare with the evidence of Justice of the Peace Mr. Bennett, who denied witnessing any other document at Spanish Town on January 8, 2015. This was yet another matter to which this Court has given much consideration, since an examination of the transfers admitted into evidence revealed that they were indeed signed by J.P. Mr. Bennett.

[62] The Claimants also emphasized that the witness testified that the testatrix had Chick V before 2015. This is important to the case since the Defendant testified that her grandmother could not leave her home to attend her wedding due to pain and that her immobility continued from 2014 to 2015. Further that the Defendant stated that her grandmother could not have left her home on January 8, 2015 that at that time she still had flu like symptoms and a terrible cough as she was still suffering from Chick V.

Submissions for the Defendant

[63] The Defence submitted that there is insufficient reason for the Court to suspect fraud in this case and identified considerations which should be borne in mind. These included the fact that variation in a testator's signature is not, by itself suspicious, particularly as there is no requirement that a testator should sign their usual signature in their will. Also, that the attesting witnesses are not beneficiaries and therefore have nothing to gain from being dishonest. It was submitted that the beneficiaries of the 2015 will, including the Defendant, who are grandchildren of the testatrix, are beneficiaries under the 2009 will. It was then submitted that the

testatrix would have wanted to update her earlier will given that two properties bequeathed in that will were subsequently sold.

[64] The Defence submitted that the testatrix was ill with chikungunya virus on the 8th January 2015, and that this may have had an effect on the way she signed her signature. Any differences in her signature could be explained by this and not due to fraud. From their point of view, her signatures for various documents on that day were consistent.

[65] The Defendant also submitted that the Court should not attach significant weight to Miss East's evidence for four main reasons:

- (i) Some of the so-called known signatures were submitted to her by Lancelot Clarke Jr., Attorney-at-Law, and the Court has before it evidence that would raise doubt as to whether counsel personally witnessed her signature;
- (ii) Miss East's conclusions were based on a scale that was disbanded years before the date of her report;
- (iii) There were material inconsistencies in her evidence; and
- (iv) There was no analysis of the effect that the testatrix's illness at the time of signing would have had on Miss East's conclusions.

Discussion and Analysis

Miss Beverly East

[66] While extensive training, certification and experience in a known field separate an expert from the ordinary witness, the Court is entitled and is indeed expected to subject that evidence to its scrutiny and analysis. The Court is not bound to accept expert evidence, merely by virtue of it having been given by an expert. The expert is permitted to offer evidence of their opinions. The evidence and conclusions of

the expert must be examined by the Court, not in isolation, but in the context of the other evidence available in the case.

- [67] The tribunal of fact must assess the evidence of an expert witness just as it does evidence of any witness and make a determination of whether that evidence should be relied upon. The evidence of Handwriting expert Ms. Beverley East, if accepted, supports the case of the Claimants, by leading this Court to the conclusion that the signature of the testatrix on later Will is a forgery, brought about by fraudulent conduct, apparently on the part of the Defendant, supported by the witnesses who appeared on her behalf.
- [68] Indeed, as stated by Pettigrew Collins J in a most helpful decision relied on by the Claimants, the ***Paul Duncanson case*** “***A judge is entitled to disagree with an expert if there is a clear basis on which that can be done. It is important that the Court carefully assesses the quality of the reasoning of the expert.***”
- [69] This Court recognizes, as did Her Ladyship in the ***Duncanson case***, that unless there exist very cogent reasons for disagreeing with the evidence of an expert, a court should not lightly depart from findings made by that expert, especially in circumstances where there is no expert evidence contradicting that of the expert with whose findings the Court disagrees. As noted by that Court, Bertram Linton J, rejected the evidence of the expert on the basis that it was equivocal at best in ***Winston Bloomfield v Markis Sandra West (Executrix of the Estate of Altamont Delisser Bloomfield) and Thelma Agatha Wilson (Executrix of the Estate of Altamont Delisser Bloomfield) [2019] JMSC Civ 23.***
- [70] The Claimants submit that there is no reason for the signature of the testatrix to have changed so drastically. They rightly emphasized, that no medical evidence has been placed before this court to substantiate claims that the testatrix suffered from any ailment capable of accounting for the variations in her signature.

[71] This is duly acknowledged by the Court. It is however, equally recognized that there is evidence from the Defendant and other witnesses, though not of a medical nature, that the testatrix had been suffering from the chikungunya virus since 2014 into 2015. Admittedly, in the absence of having been provided with detailed information about any possible illness, which may have been operating at the time of the execution of the will, Ms. East would have been unable to take such a matter into consideration throughout her analysis. She certainly could not be faulted in this regard.

[72] The Court accepts the evidence of the Defendant that her grandmother was ill with the chikungunya virus for some time, which continued up to the time of her execution of the later will. Further, that this may well have contributed in some way, to variations in her signature.

[73] From Ms. East's responses in cross examination, possible illness is a factor which would have been relevant to her analysis. Indeed Ms. East gave evidence that she would require to know even the types of medication a person may be using, in order to determine whether this too, may have an impact on their handwriting. This court recognizes its duty to decide the case based on the evidence which has been presented, mindful of the limitations involved. For this reason, the Court is not inclined to rely on the conclusion of Ms. East given that her analysis would have been deficient as regards the absence of this relevant factor being taken into account.

[74] The cross-examination of Miss East in the view of this Court, called her methodology and presentation of her findings into question in ways that lead this court to attach little weight to her evidence. One such instant, is where it was revealed that as to the level of certainty of her findings, she had utilized a scale in her analysis which had long disbanded. In addition, having indicated that she usually requests samples within a time period as close as possible to that of the document containing the questioned signature, it emerged that in her analysis, Ms.

East used a sample she received which was made in 1991, for comparison with the relevant signature purportedly made in 2015. Were that not sufficiently concerning, having used this sample in the analysis from which she formed her conclusions, Ms. East excluded it from her graphical representations, but included others which were used. She accepted that this sample contained variations but denied those suggested by counsel on the basis that he was examining the sample as a layperson, while her methodology was different. Understandably, Ms. East vehemently denied the suggestion that the reason for her deliberate exclusion was the variations. The concerns evoked from her responses were not assuaged by her further explanation that she had been using originals with originals and because the relevant sample was a photocopy, this was the basis on which she excluded it from her graphical representations.

[75] The Court is not unmindful that during cross examination, counsel for the defence made submissions which sought to convey the impression of questionable involvement of attorney-at-law, Mr. Lancelot Clarke in this matter. The defence also tried to cast doubts on the evidence of Miss Beverly East based on the fact that Mr. Clarke reportedly submitted some of the “so called known signatures,” in light of other evidence which they said made it doubtful whether Mr. Clarke personally witnessed the signatures. This court will only state that while questions have been raised concerning Mr. Clarke, who attended each day sitting throughout the course of the trial, this court has no basis to impugn the conduct of counsel Mr. Clarke.

Mr. Owen Russell

[76] Mr. Russell, is an upstanding member of the society and someone in whom, from his account and that of Mr. Alrick Williams, the testatrix reposed a tremendous level of confidence. The Court noted that Mr. Russell referred the testatrix to his longstanding attorney for the purpose of settling her will in 2009, but that though he gave her directions, he did not accompany her to the law office.

- [77] The Claimants have submitted that the Defendant has led no evidence as to when and how the testator gave instructions regarding the preparation of the 2015 paper writing and no evidence as to who prepared it. Nonetheless it has been acknowledged that a variation in signature in and of itself does not render a will invalid.
- [78] This Court is mindful that the gravamen of the Claimants' objection to the will, is that the signature is a forgery. Useful as it may have been, the Court has heard no evidence as to the actual preparation of the will in question. The Court notes that the 1st Claimant, who is most intimately engaged as to his personal knowledge indicates as this court understands it, that the basis of his suspicion of the will of 2015, is that given his kinship like relationship with the testatrix, he finds it incredible if not preposterous that she would have made a new will and not disclosed this information to him. As relates to the specifics of the will itself, the 1st Claimant stated in evidence that he also did not believe that would make such an important adjustment, such as removing him as executor and not advise him herself.
- [79] While the 2009 will specifically provided for property to be sold in order to repay the testatrix's debt to Mr. Russell and the later will does not, it is well accepted that all legitimate debts of the estate would have to be settled during its administration. Therefore, the Court sees no disadvantage to be visited upon Mr. Russell were the later will to be upheld, save perhaps that he would be dethroned as an executor.
- [80] It did not escape the attention of the Court that the 1st Claimant, as a consequence of his closeness to, testified that for some time, he had been permitted by her to select tenants and collect rental derived from one of her premises. He explained that the rental proceeds were used to assist with maintenance and other expenses for the property but that it went only a short distance in repaying Miss Pearl's outstanding debts. Understandably therefore, in cross-examination, counsel

asked Mr. Russell if the testatrix's debt to him had not yet been paid off, to which he answered in the negative.

[81] Given the nature and extent of their business dealings and having been co-signatories on at least one jointly held bank account, this Court notes that nowhere in his evidence, did Mr. Russell state that **upon seeing** the 2015 will, he was struck that purported signature of the testatrix was a forgery. His evidence in chief read as follows:

“When I saw the said will dated January 8, 2015, I immediately instructed Lancelot Clarke & Co., Attorneys-at-Law to investigate whether or not did in fact sign this will in the presence of the alleged attesting witnesses Ricardo Bennett and Danielle Henry who are named in the said alleged will dated January 8, 2015.”

[82] The court recalls that Mr. Russell appeared to have disapproved the contents of the later will, particularly the exclusion of Miss Edith Williams, who according to him, rendered much assistance to Ms. Pearl. The 1st Claimant also seemed to consider the grandchildren of the testatrix undeserving. This was because he did not know some of them and in the case of the Defendant, he doubted whether she had spent even one night with her grandmother. Notwithstanding these concerns of Mr. Russell, this court is reminded of the words used in the case of **Gill v Woodall [2010] EWCA Civ. 1430**:

“Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would be beneficiaries ... people should in general be free to leave their property as they choose...”

[83] Among the cogent details which emerged during cross-examination of Mr. Russell, was the fact that the testatrix had engaged in a number of transactions to include sales and transfers of her properties, the details of which were unknown to him. This led to Counsel showing him a number of transfer tax certificates, admitted into

evidence as Exhibits 12 and 13. When the relevant suggestions were made to Mr. Russell about the transactions having taken place, he responded “**Yes based on what you showed.**” The Court notes this was approximately three years prior to ’s demise and also three years after execution of the earlier will, which Mr. Russell had been safeguarding for years. The Court observed that the earlier will never actually passed directly between Mr. Russell and the testatrix, nor were its contents ever discussed by them. As far as Mr. Russell’s evidence is concerned, his assistant advised him one day that left the relevant envelope on his desk. When he later opened it and observed its contents, he put it away and that was that.

[84] When asked whether he knew that property, Lot 116 Sydenham Gardens was transferred by to Melbourne Blake and Patricia Ellis in April of 2012, Mr. Russell replied “***I wasn’t a party to any of that. I know from what you showed me.***”

[85] It therefore emerged that Lot 116 Sydenham Gardens and Lot 338 St. Johns Road were transferred by the testatrix without the knowledge of the 1st Claimant. Further and of significance, both these properties had been named and bequeathed in the earlier will. This therefore served as clear evidence that notwithstanding the close relationship between the 1st Claimant and the testatrix, she retained her independence and conducted significant transactions which would impact her estate upon death without sharing any information with him at any time. This therefore makes it at least probable that the testatrix could equally have revised her will without communication with Mr. Russell.

[86] The Court noted aspects of the evidence of Mr. Owen Russell, when he appeared to be less than completely candid with the Court. When questioned whether it was he who had asked Alrick Williams to come to Court to give evidence, he flatly denied, then gradually retreated from this position with further questioning, until he finally rested with the response, that he ‘***might have.***’ At other times, this witness

appeared to be looking or glancing around the Courtroom, as if to be prompted whether to respond or not.

[87] The Claimants have asked this Court to note that in the evidence of the Defendant, she got married on December 6, 2014 and had invited her grandmother who could not attend, because she was ill. Based on aspects of the evidence helpfully extracted by counsel for the Claimants, it was submitted that while the Defendant testified that her testatrix grandmother was ill with chicken and immobile from 2014, resulting in her continuing immobility in 2015, she later contradicted herself in cross-examination, when she stated that her grandmother was mobile and able to move around. The Claimants' attorneys have invited the Court to answer the pointed question, whether the testatrix was so ill on January 8, 2015 that she was at home, housebound where she signed her will, or was she mobile and sufficiently active, to have left home to sign Instruments of Transfer at the office of Attorney Chully Williams in Kingston.

[88] As noted by the Claimants, the Defendant stated that the testatrix never left her house on January 8, 2015, but later indicated that she took her to the office of Chully Williams in Kingston. The Court was therefore left with two distinct responses on the same issue.

[89] The law does not require that the Court resolve every apparent inconsistency, particularly if it is not determinative of the issue before the Court. In this instant, notwithstanding what may seem to be the tangential relationship between the will executed on January 8, 2015 and the instruments of transfer purportedly signed by the testatrix on the said date, the Court is clear on its focus. That is to determine whether this later will was in fact validly executed. Even if this Court were to find that there are questions remaining in this aspect of the Defendant's evidence, the Court is called upon to make a specific determination of the validity of the will.

[90] To this end, evidence has not been restricted to that of the Defendant, but to two other witnesses, whose demeanour, the Court also had the opportunity to assess.

Two witnesses who testified unequivocally, that they saw the testatrix sign her will on the day in question and that thereafter, they also signed as attesting witnesses.

Mr. Alrick Williams

- [91] Now Alrick Williams may be rightly considered the star witness for the Claimants, as upon his shoulders, rested the task of giving evidence, as he did, that on the January 8, 2015, he took the testatrix to Clarendon, where she spent the entire day. Were his evidence accepted, it would mean that it was absolutely impossible for the testatrix to have executed the later will during that day, at her home in Spanish Town, as claimed by the Defendant and her two witnesses. She simply would not have been at home but instead ensconced miles away in a neighbouring parish.
- [92] From his entry into the Courtroom and the witness box, Mr. Williams appeared uncomfortable. This may not be unlike many witnesses, who sometimes experience discomfort when faced with what can be a somewhat intimidating experience, especially if attending Court for the very first time.
- [93] However, from this Court's observation of Mr. Williams, throughout his evidence, his apparent level of discomfort remained exactly the same. As relates to the substance of his evidence, the Court noted that he failed to recall any details of the day's events. When asked whether there was any documentary proof of this trip, such as receipts for gas, unsurprisingly, given his close relationship with the 1st Claimant, the gas was bought at his gas station but naturally no receipt could be easily traced for that at the time of trial.
- [94] It is also unclear to the Court, the precise reason why Mr. Williams could so readily recall that the exact date of his trip to Clarendon with the testatrix, was January 8, 2015. The answer it seems was revealed during cross-examination, when to a series of questions, this witness agreed that he saw the date on the paper, the Affidavit which was prepared for him and which he signed.

[95] Mr. Williams, as the evidence revealed, could not be completely regarded as uninterested or independent, given that he was the nephew of the 2nd Claimant. This, notwithstanding his evidence that he was unaware that the 2nd Claimant was a beneficiary under the earlier will.

[96] The Court takes the view that the evidence of Mr. Alrick Williams is far less satisfactory that would be desirable were it to call the evidence of both attesting witnesses into question.

[97] This court was mindful that as it relates to the events of 2015, the witnesses would have been testifying close to a decade later and memories could well have faded. However, in the context of the responses given by Mr. Williams, this consideration did not assist.

[98] While going to great lengths to maintain that the 1st Claimant did not ask him to testify, Mr. Williams eventually stated that the only conversation he had with Mr. Russell was when he asked him to come to court and that that he thought was “last week,” presumably the week before the trial.

[99] Among the matters which Mr. Williams seemed conveniently unable to remember were:

- i. Who told him that died leaving a second will;
- ii. The name of the friend he drove to visit in Clarendon;
- iii. The address to which he drove for this visit;
- iv. The day of the week he travelled to Clarendon;
- v. Who told him that his cousin was in the 2009 will.
- vi. To whom he gave his affidavit in this matter.

[100] Mr. Williams however, had no difficulty remembering that on the 7th, January 2015, had asked him to take her to Clarendon the following day. He agreed during cross-examination that he saw it on the paper he signed, that is his Affidavit. Prior to

this, he agreed that he had also seen in the paper he signed that the later will signed was dated 8th, January 2015.

[101] When asked if he knew whether his cousin was named in the earlier will, after a long pause, Mr. Williams finally answered to the effect that he heard she was in the will. Strangely enough, Mr. Williams denied that he had ever been a taxi driver, but more worrying he denied ever telling anyone that he is a taxi driver, essentially denying this aspect which is before the Court in his evidence in chief. Having denied the contents of his own affidavit in this regard, the Court would have to question the credibility of this witness.

[102] Mr. Williams also denied any conversation with in which she told him that were anything to happen to her, he should go to Mr. Russell, though this was included in his affidavit.

[103] On a balance of probabilities, this Court is unable to be satisfied that Mr. Williams is a witness of truth and in fact harbours serious doubts as to his credibility. The Court therefore rejects the evidence of Mr. Alrick Williams.

Attestation

[104] In the case of ***Supple v Pender and another [2007] EWCH 829 (Ch)***, relied on by the Claimants, the Court was compelled to find the purported will of the testator based on several pieces of evidence, which cogently pointed to the invalidity of the will. Among these were:

- Inconsistencies and discrepancies as to whether the attesting witnesses knew each other and if so how;
- Whether and how one attesting witness was acquainted with the testator;
- Where the will was taken from at the time of execution.
- One attesting witness and another witness to fact denied parts of their statement;
- Evidence of attesting witness and those propounding validity of the will regarded as confusing;

- The witness who testified to having the case in which the will was discovered was unable to say how and when it came into his possession.

[105] The Court deemed the evidence of the witnesses so incredible, that it would have concluded that the will was invalid even in the absence of expert evidence.

[106] This Court is of the view that the authority is distinguishable from the assessment of the credibility of the attesting witnesses in the case at bar. While by no means achieving perfect consistency, this Court is mindful that witness testimony which stands in flawless alignment could equally raise suspicion that the truth is not being spoken. The Court is mindful that all witnesses to fact in this case testified concerning matters which dated several years ago. This was borne in mind.

[107] Though questions may remain on some aspects of the evidence of the witnesses for the defence, the Court found their credibility on points material to the determination of the issues in this case to have remained intact so that this court could be satisfied to rely on their overall veracity.

[108] It is the evidence of two attesting witnesses and the Defendant, which the Claimant invites this Court to reject, thereby invalidating the will dated July 8, 2015.

Mr. Ronald Campbell

[109] In the view of this Court, the evidence of private investigator, Mr. Ronald Campbell, did not strike me as being entirely independent, which ultimately resulted in the Court having some doubt as to the veracity of his account.

[110] It also appeared that he had a motive to bolster his account and the accuracy of his investigations.

- [111] As it relates to the evidence of Mr. Bennett, in the assessment of this court he came across as a more credible witness, even though there were inconsistencies, I did not find that they affected this Court's overall view of I formed of his credibility.
- [112] In assessing the credibility of the witnesses for the Claimants, the evidence of Private Investigator Mr. Ronald Campbell was of special significance. To his credit, Mr. Campbell, when challenged regarding the checks he made from the telephone directory to certify the contact information for Mr. Bennett, he indicated that he retained the relevant page of the directory and could and in fact later did return to Court with the document. Thereafter, having examined that which Mr. Campbell brought to Court, there was no further cross examination.
- [113] While in a general sense, on the face of his evidence, the credibility of Mr. Campbell might appear to have remained intact, the Court did not get the sense that he was a truly independent witness. This caused the Court to view with suspicion the statements he ascribed to Mr. Bennett.
- [114] Based on my assessment of Mr. Campbell's demeanour, the Court is compelled to reject his evidence as regards his purported conversation with Mr. Bennett.
- [115] The Court notes that the overall effect of the evidence of Mr. Ronald Campbell, if accepted by this Court, is that on his narrative of meeting Mr. Ricardo Bennett during the course of his investigations, Bennett made what would have been tantamount to a confession that he in fact did not witness the will dated January 8, 2015.
- [116] The Claimants relied on the authority of ***Barry v Butlin (1838) 2 Moo PCC 480***, where it was stated that in proving due execution of a will, the onus rests on the propounder of the will who "***must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator.***"

[117] The conscience of this court is so satisfied based on the evidence that has been presented.

Discrepancies

[118] In assessing the credibility of the attesting witnesses, the Court notes that while both were quite determined that the testatrix did not sign any other document on January 8, 2015, the Defendant stated in cross-examination that the testatrix signed two other documents, those being the instruments of transfer. What is more concerning and goes to the credibility of Mr. Ricardo Bennett in particular, is the fact that as it emerged from the Defendant's evidence, he it was who witnessed the signature of the testatrix on the instrument of transfer dated that same January 8, 2015.

[119] This Court must consider how it could it be that in examination in chief, Mr. Bennett swore that he was asked by the testatrix, to visit Miss Pearl's house to witness her will, yet in cross-examination, he stated that he just happened to visit the testatrix on the day in question, when during "reminiscent conversation," it came up about signing the will.

[120] Mr. Bennett's evidence that he just visited the house was also contradicted by the account of the Defendant, who testified that on the previous day, January 7, 2015, the testatrix advised her that she had made arrangements for a J.P. to come to the house.

[121] It also later emerged that while having stated in his examination in chief that he was with the testatrix reminiscing on the day in question for about 45 minutes, Mr. Bennett later stated in cross examination that it could be about 15 minutes. When shown his Affidavit, he agreed that it was about 45 minutes.

[122] Notwithstanding these contradictions in the evidence of the Defendant and at least one of her witnesses, this Court must consider whether these relate to issues which are material to the case, that is to say whether they go to the root of the

matter. By extension, the Court must determine the impact of the contradictions on the credibility of these witnesses. Whether the discrepancies render the witnesses incredible on the specific points or they so completely destroy their credibility in a manner that renders this court unable to place any reliance on their evidence at all.

[123] Having examined the evidence of these witnesses and accorded full consideration to the challenges with their evidence and the submissions of the respective attorneys, this Court is unable to conclude that these witnesses are unworthy of belief. In general, the Court finds that the evidence of the attesting witnesses and the Defendant remains intact, that both witnesses were present at the time when Mrs. Pearline Richardson Thomas executed her Last Will and Testament on January 8, 2015.

[124] It is for these reasons that the Court finds in favour of the Defendant and make the following orders:

ORDERS

- (i) The orders sought on the Fixed Date Claim Form, filed on April 19, 2018 are refused.
- (ii) The paper writing dated January 8, 2015 purporting to be the Last Will and Testament of Pearline Agatha Richardson-Thomas was validly executed and therefore revoked the earlier will dated May 27, 2009.
- (iii) The Last Will and Testament of Pearline Agatha Richardson Thomas, dated January 8, 2015 is proved in solemn form.
- (iv) Costs to the Defendant to be taxed if not agreed.
- (v) The Claimant's Attorney-at-law is to prepare, file and serve the formal order.