IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 131 OF 1998

BETWEEN:

In the matter of the Wills Act, Chapter 12:02.

- and -

In the matter of the Deceased persons' Estates Administration Act, Chapter 12:01.

- and -

In the matter of the Estate of **LLOYD BACCHUS**, male, deceased.

- and -

GILLIAN CHUNG, personally and in her capacity as Administratrix ad colligena bona by Order of Court dated 4th day of February, 1994.

Appellant (Defendant)

- and -

RAJPATTIE BACCHUS, Executrix named in the last Will and Testament of **LLOYD BACCHUS**, deceased, who died on the 8th day of January, 1994.

Respondent (Plaintiff)

BEFORE:

Hon. Madam Justice Desiree P. Bernard	-	**Chancellor**
Hon. Madam Justice Claudette M.C. Singh	-	**Justice of Appeal**
Hon. Mr. Justice Nandram Kissoon	-	**Justice of Appeal**

Mr. R.H. McKay, SC with Mr. G. Elias for Appellant
Mr. R. Stoby, SC with Mr. V. Puran for Respondent

2003: May 13
June 12, 26
November 19

JUDGMENT

BERNARD, C. delivered the judgment of the Court:

The Appellant and Lloyd Bacchus, the deceased, son of the Respondent Rajpattie Bacchus, lived together in a common law union from 1989. The Appellant had borne him two children, Devon Onassis, and Tiffany Michael, approximately 2 years and three months respectively, at the time of Lloyd Bacchus's death on 8th January 1994. During his lifetime Bacchus had acquired properties and was involved in lucrative business ventures with his mother, the Respondent.

The Appellant obtained by an Order of Court a grant of administration ad colligenda bona pro tempore of the estate of the deceased, but the Respondent later sought to prove in solemn form a will executed purportedly by the deceased Lloyd Bacchus on 17th February, 1993 under which he bequeathed all of his property both real and personal to his mother, the Respondent who was named as sole executrix. At the hearing of the action brought by the Respondent to have the will admitted to probate in solemn form the Appellant contended that the will was a forgery as the signature therein was not made by the deceased testator himself nor by anyone on his direction or in his presence; alternatively the said will was not duly executed in accordance with the **Wills Act, Cap. 12:02**. The learned trial judge after hearing evidence pronounced in favour of the will and revoked the letters of administration ad colligenda bona pro tempore granted to the Appellant. She has appealed to this Court.

Counsel for the Appellant identified the crucial ground of the appeal as being the finding of the learned trial judge that he was satisfied that the signatures on the purported will and other exhibits tendered are the signatures of the deceased, and that he relied on the evidence of the Respondent, Clifton Bacchus, brother of the deceased, and the perception of his own eyes, in

coming to this conclusion. Counsel attacked this finding on the ground that the trial judge failed to consider and apply two important principles before arriving at the conclusion that the will was not a forgery, i.e. genuineness of the will and suspicious circumstances. In this regard he relied on the judgment of **Haynes, JA** in **Eileen Sumintra Bankay and others v. Sukhdeo (1975) 24 WIR, 9**. He also made reference to **Thomas v. Thomas (1969) 20 WIR, 58, Tyrell v. Painton (1894) 70 LT, 453**, and a recent decision of this Court in **Seamber v. Shivamber (CA 2/2001)**.

The contention of Counsel for the Respondent was that there was primary evidence of due execution of the will which the trial judge believed and accepted; further, no evidence was led to prove that the testator did not know of or approve the contents of the will. It is the duty of a person who alleges forgery of a will to establish this by evidence, and this was lacking. In fact no particulars of want of knowledge by the testator were given in the Statement of Defence. He contended that suspicious circumstances relate to the preparation and execution of a will while want of knowledge and approval relate to the contents, and this must be specifically pleaded. He referred to **Re Hollygan's Estate, Wilson and Another v. Parris (1983) 35 WIR, 224**, and **Goddard v. Jack (1959) 1 WIR, 169**.

The learned trial judge in his judgment found no evidence of reasonable suspicion which could move the Court to invalidate the will as a forgery or otherwise; in fact he stated that the facts and circumstances did not arouse suspicion, and found that the purported will was valid and duly executed. He was satisfied that the onus of establishing due execution by the Respondent had been discharged beyond reasonable doubt.

Success of this appeal rests on finding that the purported will was not genuine and that the deceased did not know of and approve its contents. As

was said by **Rt. Hon. Sir John Patterson** in **Devine v. Wilson (1855) 10 Moo. P.C., 502** it would be wrong to regard this as involving a question of belief or disbelief of witnesses simpliciter.

Counsel for the Appellant enumerated five circumstances of suspicion which required explanation and which I have summarised:

(a) A visual comparison between the proven signatures of the deceased and his purported signature on the will which reveals a crude attempt at forgery of his signature.

(b) Failure of witnesses Jean Sahai and Clifton Bacchus as well as the Respondent to provide any evidence as to when or where the will was prepared or who prepared it.

(c) On the alleged date of execution of the will the deceased was only 26 years old, healthy and wealthy and a successful businessman.

(d) Total exclusion of his own family in the will, i.e. his reputed wife and young child.

(e) Only person who knew beforehand that a will was being prepared was one of the witnesses, Jean Sahai.

I shall address my mind to the first circumstance as this is pertinent to the issue of whether the deceased knew of and approved the contents of the will.

Several samples of the signature of the deceased were tendered as exhibits. These included an application for passport form (**Ex. E**), an affidavit sworn to by him in relation to a lost passport (**Ex. G**), four cheques signed by the deceased (**Ex. H1-H4**), a cancelled passport issued on 1st February, 1985 (**Ex. J**), another passport issued on 19th July, 1990 (**Ex. K**), an agreement of sale and purchase signed in December 1993 (**Ex. L**), and an indecipherable and faded document allegedly signed on 2nd November, 1992 (**Ex. M**). The purported will was tendered as **Ex. A**.

The learned trial judge was satisfied that the signature on **Ex. A** and on the other exhibits tendered as samples of the signature of the deceased were all

made by him, and he relied on the evidence of the Respondent and Clifton Bacchus in this regard as well as the perception of his own eyes.

On this aspect of the matter the Respondent identified the signature of her deceased son on **Ex. A** as being his and said that she had documents showing his signature which she had given to the police. When asked if she could identify any characteristics of his signature she gave none, but was positive that it was his signature as she knew how he normally writes. She also identified the signatures on **Exs. E, F, G, H1-4, J, K, L & M** as being those of the deceased, and are the exhibits I listed earlier.

A casual comparison of the signature on the purported will (**Ex. A**) with those on the other exhibits reveals startling dissimilarities even to an untrained eye. This raises in my mind and ought to raise in anyone's mind some suspicion which calls for an explanation. It could have been explained in a variety of ways, e.g. by the fact that the deceased habitually varied the manner in which he signed his name or it depended on the mood he was in at any particular time. The Respondent was specifically asked twice in examination-in-chief by her Counsel about identifying characteristics of her son's signature, and none was given. She misunderstood one question (I am prepared to place this interpretation on her answer) about whether she could identify any letter or letters in the signature on **Ex. A,** and her answer was "Yes. All the things I give to the Police I can identify". No explanation was forthcoming, and the suspicion still lingers.

The evidence of the other witness, Clifton Bacchus, on whom the trial judge relied on this aspect of the case was that his deceased brother signed the will in his presence and that of Mrs. Jean Sahai, and both of them signed in the deceased's presence. However, there were several admitted inconsistencies and contradictions in this witness's testimony surrounding the execution of the

will. One has to decide whether they are sufficiently grave to cast doubt on his veracity.

Inconsistency - Page 58 of record, lines 23 & 24:

> "I did not make any other writing on it. Apart from signing thereon Ms. Sahai affixed her stamp. That is all I saw her do."

Page 60 lines 5-11:

> "I see the letter '17th' on **Ex. A.** I did not see who wrote it. I see the date where Jean Sahai signed. I see '17.2.93'. I saw her write that.
>
> When I said before that I did not see her write anything else I wish to change this now. I now say I saw her sign put her stamp and put in the date. I still do not know who inserted the '17th' above on **Ex. A**".

Page 63 line 23, Page 64 line 1

> "When I went into Ms. Sahai's home I was facing west looking towards Ms. Sahai".

Contradiction – Lines 1 & 2:

> "I now say I was facing south".

Page 64, lines 17 & 18:

> "Lloyd gave Ms. Sahai an original and 4 copies. I now say original and 3 copies".

Inconsistency - Page 64, lines 19-25:

> "I have not mentioned about original and 3 copies before because I did not think it important to mention it. I say so because after leaving court last time I went home and while entering at home I recalled there was original and 3 copies.
>
> I agree this is not consistent with what I said earlier. This is the first time I am giving this court the benefit of my re-collection. I did not tell anyone else….

Page 65, line 1

> "I signed original and three copies of the

will."

Lines 2-4

> "I agree that when I gave evidence I said that I only signed one document. I forgot to say I signed original and 3 copies on the last hearing. I signed my name on four documents .....

Lines 8-10

> "Lloyd handed original and 3 copies to Ms. Sahai. Then Ms. Sahai read it aloud then she handed it back to Lloyd. Then Lloyd signed it. He signed original and 3 copies".

Contradiction - Lines 11-19:

> "I now say that when Ms. Sahai gave it to Lloyd, Lloyd gave it to me and I read it and gave it back to Lloyd and Lloyd signed the original and 3 copies. Lloyd hand to me the original and 3 copies and then I signed it – the original and 3 copies – then I gave it to Ms. Sahai who signed the original and 3 copies and put in the date. I did not say before that Ms. Sahai handed Lloyd the original and 3 copies when I gave evidence before. If I did not say that before I am saying it now".

In some instances Bacchus explained the inconsistencies in his testimony, but overall gave the impression of being an unreliable witness. Nevertheless the trial judge believed and relied on his evidence without subjecting it to close scrutiny. There were also some inconsistencies between his evidence and that of Jean Sahai even though not of great significance. However, an analysis of the evidence of these witnesses ought to have been undertaken instead of just stating that he believed their testimony. This was discussed in the case of **Thomas v. Thomas** (supra) where it was held that the facts of the case teemed with suspicious circumstances which ought to have arrested and excited the mind of any reasonable court of trial, and the court ought to have

a witness based on his recollection of events relevant to the issue of want of knowledge and approval of the contents of a will.

Counsel for the Respondent contended that the Appellant did not plead in her Defence want of knowledge and approval of the contents of the will. Admittedly these specific words were not used, but in paragraph 3 it was stated that the purported will sought to be propounded was a forgery, and in the Particulars that the purported signature at the foot of the paper was not made by the testator himself nor by anyone for him nor in his presence nor by his direction. What else could this mean but that the testator did not know of and approve the contents of the will? If he did not sign it himself or did not direct anyone to sign it for him in his presence he obviously did not know of and approve its contents.

The other circumstances identified by Counsel for the Appellant, i.e. failure of the witnesses to provide any evidence as to when or where the will was prepared or who prepared it and the only person who knew beforehand that a will was being prepared was Jean Sahai, were not such as would excite suspicion, and have been explained. Jean Sahai said that the will was brought to her by the deceased who had told her that he had a will to execute, and she was not told who had prepared it. Clifton Bacchus also said that the deceased showed him a will that morning and told what he wanted him to do. There is nothing suspicious in these circumstances.

In relation to the fact that the deceased totally excluded his reputed wife and young child from the will Clifton Bacchus said that he asked the deceased why he was not leaving anything for his children, and Sahai who felt that he was so young to make will inquired why he had done so. These particular circumstances were explained, and did not surround or attend the actual

execution of the will although in isolation they may give rise to some suspicion.

For all of the reasons mentioned earlier I would allow the appeal and set aside the orders of the trial judge. The purported will is hereby set aside and pronounced against. There will be costs to the Appellant to be taxed certified fit for Counsel.

D. P. Bernard

Desiree P. Bernard
Chancellor of the Judiciary.

Dated the 19th day of November, 2003.