

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVP2023/0026

BETWEEN:

LUCIEN JOSEPH

Appellant

and

DELIA DANIEL

Respondent

Before:

The Hon. Mde. Vicki-Ann Ellis
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Eghan Modeste with Ms. Alberta Richelieu for the Appellant
Mrs. Cynthia Hinkson-Ouhla for the Respondent

2024: July. 4
October 14.

Civil appeal – Notarial will – Whether a notarial will satisfies the requirements of a deed – Civil Code – Code of Civil Procedure – Non Contentious Probate Rules - Whether the learned judge erred by not considering whether the appellant being a beneficiary under the will was entitled to inspect it as an interested party – Whether the learned judge failed to have regard to the relevant principles of statutory interpretation such as the Vagliano Rule and ignored other material considerations such as the likely prejudice to the interested party

The appellant, Mr. Lucien Joseph, filed a petition in the High Court on 8th August 2022 for an order directing legal practitioner and notary royal, Ms. Delia Daniel, to permit him to view and inspect the original of the Will executed in her presence on 18th April 2019 ('2019 will'), by his mother Hester Joseph (also known as Ann Joseph, Ann Hester Joseph and Esther Joseph). The petition was made pursuant to Article 978 et seq of the **Code of Civil Procedure ('CCP')**.

The testatrix made two wills, the first on 23rd October 2015. In that first will, she named Lucien Joseph as her executor. She made her daughter Marie Louis née Joseph the executrix of the 2019 will, which is the subject of this appeal. The second will differs from the first will in material respects. Mr. Joseph is a named beneficiary under both wills. The testatrix died in March 2022. The 2019 will was probated two months later. After probate was granted, Mr. Joseph caused his lawyer to write to Ms. Daniel requesting permission to view and inspect the original 2019 will. Mr. Joseph asserted that he wished to see it to examine the testatrix's signature and determine whether he should challenge it.

Ms. Daniel refused Mr. Joseph's request to view and inspect the 2019 will. She insisted that she was not obliged to accede to his request in the absence of a court order. In her affidavit in response to the petition, she asserted that probate having been granted, it was registered at the Office of Deeds and Mortgages on 2nd June 2022 in Volume 175 as No. 224968 and a copy was served on Mr. Joseph. She averred that Mr. Joseph had not shown any proof of right or interest to demand to view the will, which by law forms part of her notarial records.

The learned judge heard the matter on 19th September 2023 and reserved her decision. On 23rd September 2023, the learned judge determined that in light of the express terms of Articles 978 – 982 of the **CCP** and the legal principles highlighted in the referenced authorities, that a testamentary instrument ought not to be treated as a deed even when drawn up with the formalities of a deed and made under seal. She noted further that at common law, a deed evidences a transaction while a will does not provide evidence of a transaction. The learned judge ruled that the petition must fail because the 2019 will did not meet the requirements of a deed under the **CCP** or at law and could not be considered a deed. Having found that the notarial will is not a deed the judge refused to grant the order sought.

Being dissatisfied with the decision of the learned judge, Mr. Joseph appealed to this Court. He advanced five grounds of appeal. At the hearing before this Court on 4th July 2024, Mr. Joseph abandoned his 5th ground of appeal (that is, the failure of the learned judge to consider the overriding objective). The remaining grounds of appeal may conveniently be condensed into two main grounds, namely: a) whether the learned judge erred by failing to consider and make a determination about Mr. Joseph's entitlement as a beneficiary to view and inspect the original will; and b) whether in construing his entitlement to inspect the original will under Article 978 of the **CCP** she erred in law by failing to consider relevant principles of statutory interpretation such as the Vagliano Rule or other material factors.

Held: allowing the appeal on all grounds except the fourth ground of appeal; setting aside the learned judge's order made at subparagraphs 1 and 2 of paragraph 14 and directing that Ms. Daniel permit Mr. Joseph to view and inspect the 2019 will, that:

1. The learned judge did not address Mr. Joseph's claim to be entitled to inspect the will purely as a beneficiary under the will. This was a live issue in the matter and ought to have been resolved. The learned judge erred in not considering it. It therefore fell to this Court to do so. It is established and universally accepted that the Supreme Court has exclusive jurisdiction over the issuance of grants of probate and all related matters pertaining to the administration of a deceased's

estate. This includes determining questions on the validity of a testamentary instrument, interpretation of the same and by extension access to relevant records. It is settled law that as part of the Court's exclusive jurisdiction in respect of probate proceedings and in the exercise of its inherent jurisdiction, it is empowered to make orders as necessary to fulfil its mandate in advancing the course of justice and thereby uphold the rights of litigants including beneficiaries.

Sections 11 and 22(3) of the **Supreme Court Act** Cap. 2:01 of the Revised Laws of Saint Lucia 2021 applied; **Halsbury's Laws of England** Vol. 11 (2020) para. 23 applied.

2. Articles 782 and 795 of the **Civil Code** clearly and expressly vest ultimate custody of the original notarial wills in the primary or sole notary who witnessed the execution of a notarial will. The **Non-Contentious Probate and Administration of Estates Rules ('NCPR')** contemplates that the grant of probate and the original will are recorded and registered in the court's registry and also made available to the public for inspection or extraction of copies. This rule (which constitutes subsidiary legislation) is made and must be interpreted subject to any contrary provision in the **Civil Code**, **CCP** or other primary legislation. It permits no derogation from the strict letter of Articles 782 and 795 of the **Civil Code** that a notarial will is to remain in the executing notary's custody and does not become or form part of the physical record or documentation in the Probate registry. With respect to access to original testamentary instruments by a beneficiary, the **NCPR** has in rule 60 codified the right limited to non-notarial wills and lends tacit acknowledgment to the reality that all probate-related proceedings are inherently judicial and must necessarily uphold the highest standards of probity and be conducted under the court's perpetual scrutiny if the system and its processes are to maintain any credibility. It follows ineluctably that the Court in its inherent jurisdiction is empowered to compel a notary to permit inspection of the original will to any interested party including a beneficiary under the will, or other member of the public in appropriate cases. This authority achieves nothing more than the ends of justice contemplated by and effected in respect of non-notarial wills by rule 60 of the **NCPR**.

Articles 782 and 795 of the **Civil Code of Saint Lucia** Chapter 4:01 of the Laws of Saint Lucia Revised Edition 2014 applied; Rule 60 of the Eastern Caribbean Supreme Court (**Non-Contentious Probate and Administration of Estates Rules ('NCPR')**) Statutory Instrument 104/2017 considered.

3. Neither Article 782 nor Article 795 of the **Civil Code** prohibits the grant of permission to a beneficiary (by a notary or by court order) to inspect the original notarial will in the hands of a notary or discourages such a practice. Furthermore, the absence of express provision in the **Civil Code** or **CCP** stating that a beneficiary is entitled to such permission neither constitutes a prohibition against inspection of the original will by him nor renders the Court impotent to

make such an order. In this case, it is incumbent on the court to give recognition to the parallel entitlement of Mr. Joseph as a beneficiary under a notarial will to inspect the original 2019 will. Thus Mr. Joseph by reason of him being a beneficiary is entitled to this access.

Articles 782 and 795 of the **Civil Code** Chapter 4.01 of the Laws of Saint Lucia Revised Edition 2014 **applied**; Article 978 of the **Code of Civil Procedure** Chapter 4.01A of the Laws of Saint Lucia Revised Edition 2014 **applied**; **Quebec Code of Civil Procedure** Chapter C-25.01 considered.

4. An analysis of the language and context of the use of a term or expression in the **Civil Code** is the primary and an indispensable tool of interpretation in construing the statute. In essence, the **Civil Code** should be interpreted internally or by reference to the language in it without additions or deletions or the use of external aids, unless there is a valid or cogent reason for doing so. This rule of statutory interpretation is called the Vagliano rule. While the learned judge addressed her mind in some way to the codal context principle, she stopped short of conducting a full examination as required to give effect to the Vagliano Rule and the codal context principle of interpretation, because she did not look at the **Civil Code** for any definition of 'deed'; or at the other provisions of the **CCP** for contextual assistance in interpreting the term 'deed'. The learned judge therefore erred in law by not fully considering and applying the Vagliano Rule in this exercise.

Bank of England v Vagliano Brothers [1891] A.C. 107 applied; **Revue général de droit – The Interpretation of the Civil Code of Saint Lucia by Sir Vincent Floissac (1983)** considered.

5. The appellant's contention that because 'will' as defined in the **Civil Code** to mean a testamentary instrument, that definition should be read together with the definition of 'deed' in Article 2141 to produce a broad construction of 'deed' which encompasses a notarial will, is convoluted and would lead to absurdity. More fundamentally, it would do violence to the rules of interpretation and does not accord with the Vagliano Code. That argument is not sustainable in law.

Bank of England v Vagliano Brothers [1891] A.C. 107 applied; Article 978 and 2141 of the **Code of Civil Procedure** Chapter 4.01A of the Laws of Saint Lucia Revised Edition 2014 applied.

6. Although the learned judge did not have regard to the definitions of 'will' and 'deed' outlined in the **Civil Code** or to the Vagliano Rule, she nonetheless correctly determined that there is no legal basis within the **CCP** to conclude that the term 'deed' in Article 978 of the **CCP** includes a notarial will. Therefore, her ruling at paragraph 14 of the judgment, that it cannot be said that the 2019 will is considered a deed for the purposes of Article 978 et seq of the **CCP** is affirmed.

JUDGMENT

Introduction

- [1] **HENRY JA:** This case raises the thorny legal question of whether a beneficiary under a notarial will is entitled to inspect the original will that is retained in the notary's custody. The appellant Mr. Lucien Joseph petitioned¹ the High Court for an order directing legal practitioner and notary royal Ms. Delia Daniel to permit him to view and inspect the original of the will executed in her presence on 18th April 2019 ('2019 will'), by his mother Hester Joseph (also known as Ann Joseph, Ann Hester Joseph and Esther Joseph).
- [2] The petition was made pursuant to Article 978 et seq of the **Code of Civil Procedure ('CCP')**.² In relation to deeds that form part of a notary's official records, Article 978 obligates him to permit inspection by the parties, their heirs and/or personal representatives. Mr. Joseph asserted that the 2019 will was a deed and insisted that he was entitled to inspect it in accordance with Article 978 or by virtue of his standing as a beneficiary under the will.
- [3] Ms. Daniel resisted the petition. The learned judge found that the notarial will was not a deed and for that reason refused to grant the order sought.
- [4] Mr. Joseph was dissatisfied with the decision of the learned judge and appealed. He advanced five grounds of appeal. He submitted that the learned judge erred by not considering whether he, being a beneficiary under the will was entitled to inspect it as an interested party. He submitted further that the learned judge failed to have regard to relevant principles of statutory interpretation and ignored other material considerations such as the likely prejudice to the parties consequent on her decision.

¹ Filed on 8th August 2022.

² Chapter 4.01A of the Laws of Saint Lucia Revised Edition 2014.

- [5] Ms. Daniel contended that the notarial will did not satisfy the requirements of a deed, was not a public document and was therefore not caught by the right to inspect under Article 978 of the **CCP**. It was her further contention that the learned judge took all relevant factors and principles of law into consideration and did not err in arriving at her determination.
- [6] For the reasons set out in this judgment, the appeal is allowed. The learned judge's order is set aside. Ms. Daniel is directed to permit Mr. Joseph to view and inspect the original 2019 will.

Background

- [7] The relevant facts are not in dispute. The testatrix made two wills, the first on 23rd October 2015. In that first will, she named Lucien Joseph as her executor. She made her daughter Marie Louis née Joseph the executrix of the 2019 will, which is the subject of this appeal. The second will differs from the first will in material respects. Mr. Joseph is a named beneficiary under both wills.
- [8] The testatrix died in March 2022. The 2019 will was probated two months later. After probate was granted, Mr. Joseph caused his lawyer to write³ to Ms. Daniel requesting permission to view and inspect the original 2019 will. Mr. Joseph asserted that he wished to see it to examine the testatrix's signature and determine whether he should challenge it.
- [9] Ms. Daniel refused Mr. Joseph's request to view and inspect the 2019 will. She insisted that she was not obliged to accede to his request in the absence of a court order. In her affidavit⁴ in response to the petition, she asserted that probate having been granted, it was registered at the Office of Deeds and Mortgages on 2nd June 2022 in Volume 175 as No. 224968 and a copy served on Mr. Joseph. She averred that

³ By letter dated 21st June 2022 and marked 'LJ3' addressed to the respondent from 'The Firm – Modeste'; at pg. 20 of the Record.

⁴ Filed on 18th October 2022.

Mr. Joseph had not shown any proof of right or interest to demand to view the will, which by law forms part of her notarial records.

[10] The matter was heard on 19th September 2023 and the decision was reserved. By court order dated 23rd September 2023, the learned judge summarised the issue as being whether a will can be categorised as a deed for the purposes of Articles 978 – 982 of the **CCP**. She noted that the word ‘deed’ is not defined in the **CCP**. She took into account that the **CCP** is grounded in the laws of Quebec; the usual definition of a deed; learning from **Halsbury’s Laws of England**⁵ as to the nature of deeds and dicta from the cases **R v Morton**⁶ and **Hawksby v Kane**⁷.

[11] The learned judge concluded that in light of the express terms of Articles 978 – 982 of the **CCP** and the legal principles highlighted in the referenced authorities, that a testamentary instrument ought not to be treated as a deed even when drawn up with the formalities of a deed and made under seal. She noted further that at common law a deed evidences a transaction while a will does not provide evidence of a transaction. The learned judge ruled that the petition must fail because the 2019 will does not meet the requirements of a deed under the **CCP** or at law and cannot be considered to be a deed.

Grounds of Appeal

[12] Mr. Joseph advanced six grounds of appeal. They are:

- (a) The learned judge erred when she failed in full, to address and make a determination on the issues of whether the appellant, a beneficiary under the last will and testament of Hester Joseph and an interested party, is entitled to view and inspect the original will solely in his capacity as a beneficiary and thus an interested party, particularly so as this is a live issue in the latter – it having been argued before her as indicated at paragraph 3 of the judgment under the heading The Application.

⁵ Vol. 32 (2019) at para. 201; Vol. 52 at para 231.

⁶ (1873) LR 2 CCR 22.

⁷ (1913) 47 ILT 96.

- (b) The learned judge erred in law when, in interpreting codified law she first considered Halsbury laws of England to interpret the Code of Civil Procedure and failed to acknowledge that when interpreting the Code one starts from the language of the Code rather than the common law in accordance with the 'Vagliano Rule.'
- (c) The learned judge erred in law when she failed to apply the key principles and methods commonly used in the interpretation of codified law in considering the purpose of article 978 of the Code of Civil Procedure as well as the legislative intent behind the construction of the article, particularly so in light of the article containing the words "either to the parties or their heirs and legal representatives."
- (d) The learned judge erred when she failed to consider the wide definition of a deed in Article 2141 of the Civil Code of Saint Lucia, which indicates that a deed is a notarial instrument which includes a notarial will.
- (e) The learned judge erred and failed to consider the overriding objective of the court; to deal with matters fairly in all circumstances.
- (f) The learned judge erred when she failed to consider whether there was any prejudice of the respondent in permitting the Petitioner to inspect the last will and testament of the deceased as compared to any prejudice to the petitioner in disallowing the inspection of the last will and testament of the deceased.

[13] At the hearing before this Court on 4th July 2024, Mr. Joseph abandoned his 5th ground of appeal (failure of the learned judge to consider the overriding objective). The remaining grounds of appeal may conveniently be condensed into two, namely: a) whether the learned judge erred by failing to consider and make a determination about Mr. Joseph's entitlement as a beneficiary to view and inspect the original will; and b) whether in construing his entitlement to inspect the original

will under Article 978 of the **CCP** she erred in law by failing to consider relevant principles of statutory interpretation such as the Vagliano Rule or other material considerations such as the likely prejudice to the interested party.

**Appellant's Entitlement as a Beneficiary to Inspect the Original Notarial Will
Appellant's Submissions**

- [14] Mr. Joseph submitted that although he raised before the learned judge that he was entitled as a beneficiary to view the original of the 2019 will, she failed to address it and made no pronouncement on this issue. He reasoned that this was a fatal flaw in the judgment which necessitates that the issue be considered and determined by this Court.
- [15] The main thrust of Mr. Joseph's argument was that a beneficiary's entitlement to view the original of the will is an essential one, grounded as it is in principles of fairness, legal transparency and the right to protection in law. He argued that access to the original document is pivotal for any beneficiary to verify the accuracy of the will's contents and its legal validity. He submitted that it also preserves the integrity of the probate process and generally offers a protective measure against potential fraud or mismanagement of the deceased's estate.
- [16] Mr. Joseph submitted further that the original will becomes a public document under the non-contentious probate and administration of estates rules. He is therefore entitled to inspect it whether it is deposited at the registry of deeds and mortgages or remains in possession of the notary royal at her office. He added that the respondent would suffer no prejudice by such inspection.
- [17] He acknowledged that Article 782 of the **Civil Code** of Saint Lucia⁸ provides that a notarial will must be made as an original and remain with the notary. He submitted however, that as long as Notaries Royal are by law constituted custodians of the original of notarial wills, it must be accepted that part of their function is to facilitate

⁸ Chapter 4.01 of the Laws of Saint Lucia Revised Edition 2014.

the viewing and inspection of same by interested parties including beneficiaries. He stressed that he is a beneficiary under the will and not some busybody. There should be no reason therefore, why he should not be permitted to inspect the original will. Moreover, he was not content with having sight of just a copy.

Respondent's Submissions

- [18] Ms. Daniel countered that there is no law that permits a beneficiary to view the original of a notarial will. She submitted that Mr. Joseph has advanced no legal authority in support of his arguments. As to whether the original of a notarial will is a public document, she submitted that it is not. She accepted that the certified copy that is attached to the probate in the registry is a public document. She maintained that the grant of probate in respect of a notarial will does not render the original a public document.
- [19] She accepted that the learned judge did not make a determination regarding Mr. Joseph's entitlement as a beneficiary to view the original will, separate and apart from the consideration she gave to Article 978 of the **CCP** and the associated provisions. Ms. Daniel contended however, that although it was not expressly stated, no other conclusion could flow from the facts of the case and the learned judge's reasoning. She submitted that it cannot be reasonably argued therefore that the issue of Mr. Joseph's right to inspect the original will was not determined. She reasoned that the learned judge correctly ruled that a testamentary instrument is not a deed and therefore Mr. Joseph's application must fail.
- [20] Ms. Daniel argued that Mr. Joseph may only inspect the original will if he can establish a legitimate reason for doing so. According to her, no such circumstances exist in the case at the appeal bar. Therefore, permitting him to see the original will would open the floodgates to challenges being made to the authenticity of wills. She was insistent that there must be some limitation on access to notarial wills because they are part of a notary's repertoire.

Discussion

- [21] In her 14-paragraph Order the learned judge identified the two issues which arose for consideration. They are set out at paragraphs 1 and 3 of the order and it is helpful to reproduce them here. They state:

'1. The petition which is filed pursuant to Article 978 et seq of the Code of Civil Procedure ("CCP") Cap 4.01A seeks an order compelling the respondent to permit the petitioner to inspection the original copy of his mother's Last Will and Testament dated 18th April 2019, which was executed before the respondent. The respondent is a notary royal practicing in this jurisdiction.
2. ...
3. It is said that the petitioner is entitled to view and inspect the original of the 2019 Will by virtue of being named a beneficiary in the said Will, and despite several requests made to the respondent, she has refused to permit him to do so.' (emphasis added)

- [22] Paragraph 1 identifies the first issue as being whether the appellant was entitled under Article 978 of the **CCP** to inspect the original will. This necessitated an examination of that article and other material provisions of the **CCP** as well as the application of relevant principles of statutory interpretation. Paragraph 3 of the Order sets out the related but separate issue of whether Mr. Joseph as a beneficiary was entitled outside of Article 978 of the **CCP** to inspect the original notarial will.

- [23] In relation to the first issue, the learned judge set out and discussed Articles 978 - 982 of the **CCP** (in paragraphs 7 – 13 of the order). Article 978 provides:

"978. Notaries are bound, upon payment of their lawful fees and dues and without any Judge's order, to grant permission to inspect or to give copies or extracts of any deed forming part of their official records, either to the parties or their heirs or legal representatives." (Emphasis added)

- [24] Noting that Article 978 confers on heirs and legal representatives an express right of inspection of deeds forming part of the official records of a notary, the learned judge's consideration centered on whether the 2019 will is a deed for the purposes of that provision. She took into account the fact that 'deed' is not defined in the **CCP**; that the laws of Quebec form the basis of the **CCP**; that a deed is generally defined as a signed written contract dealing with some interest in property or other legal or

equitable right, title or interest that is made under seal and delivered as the executor's act and deed.

[25] The learned judge also referenced the common law definition of 'deed' as articulated in **Halsbury's Laws of England** and the holdings in the referenced cases, that testamentary instruments are not deeds even when made under seal and that a document is not a deed unless it states on its face that it is a deed. She reasoned that in view of those settled principles of law, even if a will is drawn up with the formalities required for a deed and is made under seal, it is not to be considered a deed and should not be treated as one.

[26] She found that the 2019 will is a testamentary instrument, was not executed as a deed and did not have the characteristics of a deed as described in the referenced authorities. At paragraph 14, she concluded simply:

“In light of the foregoing, it cannot be said that the 2019 will is considered a deed for purposes of article 978 et seq, and the petition is bound to fail.”

[27] As has been accepted by the parties, the learned judge did not address Mr. Joseph's claim to be entitled to inspect the will purely as a beneficiary under the will. This was a live issue in the matter and ought to have been resolved. The learned judge erred in not considering it. It therefore falls to this Court to do so.

[28] A useful starting point is to examine the Court's function in the administration of estates and associated matters. It is established and universally accepted that the Supreme Court has exclusive jurisdiction over the issuance of grants of probate and all related matters pertaining to the administration of a deceased's estate. This includes determining questions of the validity of a testamentary instrument, interpretation of the same and by extension access to relevant records.

[29] In this regard, sections 11 and 22(3) of the **Supreme Court Act**⁹ are instructive. They provide respectively:

“11. The jurisdiction vested in the High Court in civil proceedings including ... in probate causes shall be exercised in accordance with the provisions of this Act, the Civil Code, the Code of Civil Procedure, any other law in force in the State and rules of court, and, where no special provision is therein contained, such jurisdiction shall be exercised as nearly as may be administered for the time being in the High Court of Justice in England.”

“22. (1) ...

(2) ...

(3) The High Court shall have full jurisdiction to entertain and shall dispose of all or any of the following questions or matters, that is to say—

(a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, **heir or person beneficially interested**,”. (Emphasis added)

[30] Both provisions expressly articulate the court’s role as the exclusive arbiter in matters pertaining to the administration of a deceased person’s estate. En passant, it is worth noting that although the referenced provisions speak to the High Court’s jurisdiction, the Court of Appeal is equally competent to determine such questions by virtue of its inherent and statutory authority to hear and determine appeals arising from civil proceedings in the High Court in accordance with applicable rules of court. Such matters include controversies concerning the administration of a deceased’s estate.¹⁰

[31] The practice in the probate division of the Supreme Court covers non-contentious and contentious proceedings. Non-contentious proceedings are governed by the **Non-Contentious Probate and Administration of Estates Rules** (**‘NCPR’**).¹¹ The **Civil Procedure Rules** (Revised Edition) 2023 (**‘CPR’**) contain the procedures to guide contentious proceedings. The issue at hand being in the non-contentious realm, engages the **NCPR**.

⁹ Cap. 2.01 of the Revised Laws of Saint Lucia 2021.

¹⁰ See Article 9(1) of the Supreme Court Order, Cap. 2.01 and sections 23 and 24 of the Supreme Court Act.

¹¹ Statutory Instrument 104/2017.

- [32] A further consideration is that Saint Lucia benefits from having what is referred to as a 'hybrid' legal system, where both the common law and entrenched vestiges of the French civil law operate in tandem. This case presents an excellent example of the divergence in the practical operation of those two systems on a narrow point (as to the custody of the original will) and begs the question whether for purposes of access to records by a beneficiary the consequences of application are irreconcilable or capable of being rationalised.
- [33] As regards custody of a notarial will, Article 782 of the **Civil Code** provides:
- “782. **A notarial will must be made as an original remaining with the notary.**
The witnesses must be named and described in the will.
Any person may be a witness who is of full age, has not been convicted of felony, and is not in the employment of the executing notaries.
The date and place of execution must be stated in the will.” (Emphasis added)
- [34] The position in relation to custody of the original notarial will does not change even after it is probated. Article 795 of the **Civil Code** stipulates that an original notarial will remains in the notary's custody. It states:
- “795. Probate is granted as of course in case of the original or a certified copy of a notarial will; ...
The will must remain deposited in the Court unless it is a notarial will, the original of which is in the custody of a notary in Saint Lucia.”¹² (Emphasis added)
- [35] The **Civil Code** clearly and expressly vests ultimate custody of the original notarial wills in the primary notary or sole notary who witnessed the execution of a notarial will. In face of this unambiguous stipulation, when processing notarial wills for issuance of a grant of probate, the probate registry would accept a certified copy of the notarial will and may require presentation of the original for authentication purposes. However, for record and registration purposes, a certified copy is attached to the grant of probate.

¹² Substituted by Act 23 of 1916.

[36] In all other cases, the original wills must be lodged at the probate registry and remain in custody there unless defaced, damaged or lost. Indeed, the **NCPR** contemplates that the grant of probate and the original will are recorded and registered in the court's registry and also made available to the public for inspection or extraction of copies. In this regard, rule 60 provides:

“60.—(1) **Immediately on the grant of probate** or letters of administration with will annexed **the Court shall —**

(a) **record the will and any codicil in the registry**; and

(b) **transmit the original will and any codicil to the registry.**

(2) **The Court shall —**

(a) **maintain a register and record all grants of probate** and letters of administration **which it has issued**;

(b) **allow public inspection of the register** at all reasonable hours; and

(c) permit the taking of copies on payment of the prescribed fee.”
(Emphasis added)

[37] Naturally, this rule (which constitutes subsidiary legislation) is made and must be interpreted subject to any contrary provision in the **Civil Code**, **CCP** or other primary legislation. It permits no derogation from the strict letter of Articles 782 and 795 of the **Civil Code** that a notarial will is to remain in the executing notary's custody, and does not become or form part of the physical record or documentation in the Probate registry.

[38] Notwithstanding, it must be emphasised that the law specifically recognises and expressly protects the right of the public to access and obtain copies of the original testamentary documents (including wills) which are recorded and registered in the Probate registry. Undoubtedly, this recognition reflects the principles of transparency, fairness, probity and the uncompromising adherence to the highest standards, principles and ideals that are necessarily inherent and indispensable in upholding the tenets of succession law in general and the private and public interests attendant on the judicious administration of a deceased person's estate.

[39] In furtherance of proper administration, a critical component of such a system must include built-in checks and controls on the exercise of authority by each actor in the system, and cannot exclude notaries. Unless addressed in legislation, these are

matters which are dealt with by the court within its expansive inherent jurisdiction. It is settled law that the court may invoke its inherent jurisdiction to effectively and efficiently discharge its obligations as a court of law in advancing the interests of justice. This it has done consistently throughout its history¹³. As has been explained authoritatively by the learned authors of **Halsbury's Laws of England**:

"The jurisdiction of the court which is comprised within the term 'inherent' is that which enables it to fulfil, properly and effectively, its role as a court of law. However, the term 'inherent jurisdiction' is not used in contradistinction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court, and a claim should be dealt with in accordance with the rules of court rather than by exercising the court's inherent jurisdiction where the subject matter of the claim is governed by those rules.

...

In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them."¹⁴

[40] It cannot be over-emphasised that the grant of probate being intrinsically a judicial function is conducted under superintendence of the High Court. It is effected by order and under seal of the probate court.¹⁵ Rule 60 of the **NCPR** lends tacit acknowledgment to the reality that all probate-related proceedings are inherently judicial and must necessarily uphold the highest standards of probity and be conducted under the court's perpetual scrutiny if the system and its processes are to maintain any credibility. In my view, it would be quite curious and alarming if notarial wills were excluded from such protections so that the High Court could not mandate their inspection by a beneficiary of a will or other interested party.

[41] Accordingly, part and parcel of maintaining the integrity of the process must be that the court as part of its inherent jurisdiction retains coercive control of access to the

¹³ For example, by crafting the Mareva injunctive relief.

¹⁴ Halsbury's Laws of England, Vol. 11 (2020) para. 23.

¹⁵ The Law of Succession, 4th Ed., Anthony R. Mellows, at pgs. 215 and 241.

underlying documents and deploys it appropriately in suitable cases, not limited to any certified copy of the original will surrendered by a notary, but extending equally to the original notarial will in the notary's custody. Without such control and supervision, the entire probate jurisdiction of the court would be undermined by the existence of an unregulated element of its processes.

- [42] From the foregoing, it follows ineluctably that the Court in its inherent jurisdiction is empowered to compel a notary to grant inspection of the original will to any interested party including a beneficiary under the will, or other member of the public in appropriate cases. This authority achieves nothing more than the ends of justice contemplated by and effected in respect of non-notarial wills by rule 60 of the **NCPR**.
- [43] In my opinion, it would be foolhardy and absurd for the court to deny permission to a beneficiary under a notarial will to inspect a notarial will simply because Article 782 of the **Civil Code** mandates that the notary retains it in his or her custody. Such a denial would seem even more glaring and unjustifiable where on the one hand a member of the public who has no connection to a testator or his estate is permitted to inspect an original of a regular will (under rule 60 of the **NCPR**); while a beneficiary under a notarial will is prevented from examining the original will, simply because it is in the notary's custody. To my mind, this reflects an inequality and discrimination which is inexplicable, unreasonable and cannot be justified in the circumstances of this case.
- [44] Moreover, it has not gone unremarked that neither Article 782 nor Article 795 of the **Civil Code** prohibits the grant of permission to a beneficiary (by a notary or by court order) to inspect the original notarial will in the hands of a notary or discourages such a practice. Furthermore, the absence of express provision in the **Civil Code** or **CCP** stating that a beneficiary is entitled to such permission neither constitutes a prohibition against inspection of the original will by him nor renders the Court impotent to make such an order.

- [45] I am satisfied that Ms. Daniel would not be prejudiced by the making of an order requiring her to permit such inspection by Mr. Joseph. Indeed, such facility is akin to the grant of permission to inspect a deed in the hands of a notary as contemplated by Article 978 of the **Civil Code**. For his part, Mr. Joseph would find himself in the position of being subjected to the terms of the 2019 will without having had the opportunity to satisfy himself as to the signatures of the testatrix and/or attesting witnesses. I harbour no doubt that in light of the circumstances of this case, that Mr. Joseph by reason of him being a beneficiary is entitled to this access.
- [46] In summary, it is settled law that as part of the Court's exclusive jurisdiction in respect of probate proceedings and in the exercise of its inherent jurisdiction, it is empowered to make orders as necessary to fulfil its mandate in advancing the course of justice and thereby uphold the rights of litigants including beneficiaries. With respect to access to original testamentary instruments by a beneficiary, the **NCPR** has in rule 60 codified the right limited to non-notarial wills. I am satisfied that the interests of justice requires that beneficiaries under a notarial will should in appropriate cases under the court's superintendence and by order of court have similar access to view the original of such wills. In this case, it is incumbent on the court to give recognition to the parallel entitlement of Mr. Joseph as a beneficiary under a notarial will to inspect the original 2019 will. I would therefore order that he be permitted to inspect the original 2019 will.
- [47] For completeness, although neither party supplied excerpts of the equivalent Quebec legislation, it is worth noting that the **Quebec Code of Civil Procedure** ('**Quebec Code**')¹⁶ (grounded in the French civil law as are the **CCP** and the **Civil Code**) contains similar provisions to Article 978 of the **CCP**. Like Article 978, the **Quebec Code** imposes a duty on a notary to supply copies of certain records to interested persons on payment of certain fees and to give them access to those documents. Those documents are described as 'acts forming part of their records' and must be made available on request to the parties, their heirs or representatives.

¹⁶ Chapter C-25.01.

[48] It suffices to note that the corresponding provision (Article 484 of the **Quebec Code**) provides:

“484. Notaries are required, on payment of their professional fees and expenses, to issue a copy of or an extract from the acts forming part of their records and required to be published to the parties to the act, their heirs or their representatives, or to otherwise give them access to those acts.

They are also required, on receipt of such a payment, to issue a copy of or an extract from the acts that are not required to be published, or to otherwise give access to those acts,

(1) to the parties to the act;

(2) in the case of a protection mandate that has not been revoked, if it is established to the notary’s satisfaction that the incapacity of the mandator is such that the mandator may need to be represented in the exercise of his civil rights, to the mandator’s spouse or to close relatives and persons closely connected to the mandator by marriage or civil union as well as to any person who shows a special interest in the mandator;

(3) in the case of an act containing testamentary provisions that have not been revoked, to the liquidator of the succession, an heir, a successor, an heir by particular title or to a person who, in the absence of testamentary provisions, would have been called to the succession, on proof of the death of the testator or donor; and

(4) to any other person, where provided for by law.” (Emphasis added)

[49] The **Quebec Code** does not define ‘acts forming part of their records’. However, from the foregoing, in particular article 484(3), it is pellucid that under the **Quebec Code** an act includes a will that has not been revoked. Furthermore, a notary is required by that sub-article to provide a copy of such a testamentary act to an interested person including any party to the act, his or her heirs and representatives, putting the matter beyond dispute in that jurisdiction.

[50] Provision is also made expressly in Article 485 for an interested person to apply for a court order to compel a notary to grant access to the record and to issue a copy of the same to the interested person. In Quebec therefore, the Court would not need to invoke its inherent jurisdiction to compel a notary to grant to the specified persons access to a will or to give them copies of it. Article 485 of the **Quebec Code** states:

“485. If a notary refuses, or fails to respond, any person who establishes their right or their interest may request a court order directing the notary to

issue a copy of an act or an extract from an act or to otherwise give access to it.

The order specifies the date and time when access is to be given. It must be notified in sufficient time to the notary; the notary certifies on the act that they are acting on the order of the court.” (Emphasis added)

I turn next to consider the remaining issue that emerges from the other grounds of appeal.

Did the judge disregard relevant principles of statutory interpretation or other material considerations?

Appellant’s Submissions

- [51] On this issue, Mr. Joseph contended that the learned judge committed several errors in principle by her failure to consider applicable principles of statutory interpretation and other pertinent matters. He argued firstly, that she erred in law by starting off with a consideration of the common law as set out in **Halsbury’s Laws of England** as an aid to interpreting the codified law and the purpose of and the legislative intent behind Article 978 of the **CCP**, instead of first analysing the language of the **Civil Code** and applying other key principles and methods commonly used in the interpretation of codified law, as recommended by the ‘Vagliano Code’.
- [52] Quoting an excerpt from Sir Vincent Floissac in the **Revue général de droit – The Interpretation of the Civil Code of Saint Lucia**, Mr. Joseph adopted his articulation of the approach to interpretation of the **Civil Code** where he opined that:
- “The cardinal rule of interpretation of our Civil Code must be the Vagliano Rule – the rule which was expounded in *Bank of England v Vagliano Brothers* [1891] A.C. 107 (Vagliano’s Case). The Vagliano Rule is based on the presumption that a Code such as ours is intended to be an adequate and accurate summary of the law which it expresses. According to the Vagliano Rule, unless there is a valid and cogent reason for going beyond a Code, it should be interpreted internally or by reference to the language contained therein, without additions thereto or subtractions therefrom, without enquiring into the previous state of the law or otherwise resorting to external aids in its construction.”
- [53] Noting that the **Civil Code** serves as substantive law that delineates the foundational legal principles governing various aspects of civil relationships and rights that provides a comprehensive framework for rights and obligations, Mr. Joseph pointed

out that the **CCP** on the other hand, operates as procedural law that offers guidance on the methods and processes through which the substantive rights in the **Civil Code** are enforced and adjudicated in the legal system. He submitted that a nuanced approach must therefore be adopted towards legal interpretation of the **Civil Code** and this involves a meticulous examination of its language alongside the procedural aspects in the **CCP** to ensure a comprehensive understanding of the overall legal landscape. He reasoned that the learned judge's failure to consider and examine the language of the **CCP** to determine the meaning of Article 978 was a misdirection, as was her reliance on **Halsbury's Laws of England** and this resulted in the erroneous construction of the article.

[54] Mr. Joseph argued secondly, that the learned judge erred in law by not considering the wide definition of 'deed' in article 2141 of the **Civil Code** which incorporates notarial instruments and by extension and necessary implication 'notarial wills' in its meaning. He submitted further that the learned judge erred by not having regard to the definition of 'will' in the interpretation section of the **Civil Code** which ascribes to that term the meaning 'any testamentary instrument'. He reasoned that taken together those definitions suggest that 'deed' is to be construed broadly to include a notarial will.

[55] In further support of that argument, Mr. Joseph pointed to Article 1139 of the **Civil Code** which provides that a notarial instrument other than a will is authentic if signed by all parties, although executed before only one notary. He argued that the reference to a 'notarial instrument other than a will' signifies that such a will is a notarial instrument that is considered to be authentic only if executed before more than one notary. The corollary he submitted, is that since a will is a notarial instrument, it is also a deed. This he argued, is the correct interpretation to be applied to 'deed' on application of the Vagliano Code principles. Therefore, the learned judge erred in holding that a will is not a deed, because of her reliance on the common law learning in **Halsbury's Laws of England** as to what is a will.

Respondent's Submissions

- [56] Ms. Daniel countered that the definition section of Article 2141 does not assist Mr. Joseph because it applies only to Part Fourth of the **Civil Code** which deals with trustees and is not applicable to Article 978 of the **CCP**. She submitted that the wide definition of 'deed' in Article 2141 clearly states:

'In this part, unless the context otherwise requires ... "deed" means a notarial instrument.'

Therefore, the definition is clearly restricted to the provisions in that Part; is applicable only by specific reference to the use of 'deed' in the context of dealings with trustees under Part Fourth of the **Civil Code** and does not include all notarial instruments. She concluded that while all deeds are notarial instruments, not all notarial instruments are deeds and notarial wills fall outside of the class of notarial instruments which are deeds.

- [57] Accordingly, the definition of 'deed' in that part of the **Civil Code** demonstrates that elsewhere within the statute that definition is not applicable to references of all notarial instruments. In those instances therefore, notarial instruments should not be considered to be deeds. Ms. Daniel argued further that the logical conclusion to be drawn is that Mr. Joseph's application must fail because he has no legal or other authority to demand inspection of an original will and the learned trial judge properly ruled that a testamentary instrument is not a deed.

- [58] As to the applicable rules of construction, Ms. Daniel submitted that if the words of a statutory provision are clear and unambiguous there is no need to infer or imply any terms. She contended that Mr. Joseph has not pointed to any ambiguity in Article 978 of the **Civil Code** which necessitates the drawing of any inference or the implying of terms.

- [59] She submitted further that the learned judge did not begin with **Halsbury's Laws of England** in her consideration of the meaning of deed in Article 978. She noted that at paragraph 8 of her judgment, the learned judge began by examining the meaning

of 'deed' within the article and concluded that the term is not considered in the context of wills and testamentary instruments. It was only after examining 'deed' in that codal context that she turned to the **Halsbury's Laws of England** which, fortified her finding that wills and testamentary instruments are not deeds. She concluded that the learned judge adopted the correct approach and came to the right conclusion.

- [60] Ms. Daniel also referenced **Joseph St. Rose v Brice Lafitte**¹⁷ where the issue of codal interpretation arose. In it, Sir Vincent Flossac stated:

"The interpretation of the articles words and phrases of the Civil Code is the ascertainment of the meanings which the legislature intended those articles words and phrases should bear. The legislative intention is an inference drawn from the primary meanings of those articles words and phrases with such modifications to those meanings as may be necessary to make them consistent with the codal or statutory context. The codal or statutory context comprises every other article word and phrase in the Code and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention. The surrounding circumstances include the evident object of the series of articles to which the article under construction belongs and the fact that the interpretation of an article word or phrase in its primary sense would result in manifest absurdity."¹⁸

Ms. Daniel posited that from the foregoing it is apparent that the entire code should be considered when interpreting a particular word phrase or statute and context is important.

- [61] She also cited **Black's Law Dictionary** in which 'deed' is defined as 'a conveyance of realty.' She argued that a will does not fall into that definition. Accordingly, Mr. Joseph's appeal must fail on this issue.

Discussion

- [62] Both Mr. Joseph and Ms. Daniel relied on the codal context principle of statutory interpretation highlighted in the Vagliano Code and referenced in **Joseph St. Rose**

¹⁷ Civil Appeal No 1B of 1990.

¹⁸ Ibid at pg. 3.

v Brice Lafitte. They are in agreement that an analysis of the language and context of the use of a term or expression in the **Civil Code** is the primary and an indispensable tool of interpretation in construing the statute. In essence, the **Civil Code** should be interpreted internally or by reference to the language in it without additions or deletions or the use of external aids, unless there is a valid or cogent reason for doing so ('Vagliano Rule'). The legal authorities on which they rely demonstrate that this is indeed an accurate statement of the law. However, the parties hold divergent positions as to whether the learned judge considered the codal context before examining the common law as outlined in **Halsbury's Laws of England**. Mr. Joseph insisted that she did not, while Ms. Daniel contended that she did so in paragraph 8 of the judgment. This dispute is at the heart of this second issue.

[63] As noted by Ms. Daniel, the learned judge's analysis commenced at paragraph 8 of the judgment. She stated:

"8. The Court notes that the CCP does not define a "deed" and according (sic) the laws of Quebec which formed the genesis of the CCP, a deed is generally defined as a written contract, made under seal by the promisor(s); also called a formal contract; typically used for the transfer of real property. The term is not considered in the context of wills and testamentary instruments." (Emphasis added)

[64] The learned judge evidently gave consideration to whether 'deed' is defined in the **CCP** and she ruled that it was not. However, there is no indication that she looked at the **Civil Code** for such a definition and I accept that she did not. This would have been desirable as an aid to ascertaining the meaning of 'deed' in Article 978 of the **CCP**, simply because both the **CCP** and the **Civil Code** expressly provide that the meanings ascribed to words in the **Civil Code** apply to those words under both statutes.

[65] In this regard, Article 1 of the **Civil Code** states:

"The meaning, explanation or application assigned in this section to a word, term or enactment, attaches to it whenever occurring in this Code, in the Code of Civil Procedure, or in any ordinance or proclamation, unless such

meaning, explanation or application is inconsistent with the context or with the object of the provision in which such word, term or enactment occurs, or is repugnant to some special provision of law."

To like effect, article 31 of the **CCP** states:

"1. The provisions of article 1 of the Civil Code apply to this Code."
(Emphasis added)

[66] In light of those provisions, while it is right to assert that the learned judge addressed her mind in some way to the codal context principle, she stopped short of conducting a full examination as required to give effect to the Vagliano Rule and the codal context principle of interpretation, because she did not look at the **Civil Code** for any definition of 'deed'; or at the other provisions of the **CCP** for contextual assistance in interpreting the term 'deed'. I therefore agree with Mr. Joseph that she erred in law by not fully considering and applying the Vagliano Rule in this exercise. I would therefore uphold his second and third grounds of appeal.¹⁹

[67] However, that is not the end of the matter. This conclusion leads to the question of whether application of the Vagliano Rule or the codal context tool of statutory construction would have yielded a different interpretation even if considered fully by the learned judge. Mr. Joseph advanced three arguments on this point. His first is embodied in his fourth ground of appeal and hinges on whether the definition of 'deed' in Article 2141 of the **Civil Code** applies to Article 978 of the **CCP**. The simple answer is that it does not because that definition is expressly restricted to the use of 'deed' when it appears in Part Fourth of the **Civil Code** and Article 978 of the **CCP** is not in Part Fourth of the **Civil Code**.

[68] Mr. Joseph's second point relates to the definition of 'will'. His contention that because 'will' as defined in the **Civil Code** to mean a testamentary instrument, that definition should be read together with the definition of 'deed' in Article 2141 to produce a broad construction of 'deed' which encompasses a notarial will, is convoluted and would lead to absurdity. More fundamentally, it would do violence

¹⁹ Grounds b and c.

to the rules of interpretation and does not accord with the Vagliano Code. In my opinion, that argument is not sustainable in law. I would accordingly dismiss his fourth ground of appeal.²⁰

[69] Thirdly, Mr. Joseph's contention that use of the expression 'a notarial instrument other than a will' in Article 1139 of the **Civil Code** suggests that all notarial wills are deeds, ignores the codal context in which the term is used, in that the issue being addressed in that and nearby provisions is how to determine the authenticity of a notarial instrument. I am satisfied that the codal context of Article 1139 and the surrounding articles does not lend itself to the extrapolation of a meaning of 'deed' from that expression. In my opinion, it would be quite a stretch to arrive at such an interpretation through application of the Vagliano Rule.

[70] Mr. Joseph urged no further submissions grounded in the codal context principle of interpretation or application of the Vagliano Code that would justify a finding that the term 'deed' in Article 978 of the **CCP** should be interpreted to include a notarial will. An examination of the preceding and succeeding articles in the **CCP** does not disclose any legal or other basis for so concluding.

[71] In those circumstances, the learned judge cannot be justifiably criticised for considering the meaning of 'deed' 'according to the laws of Quebec' or at common law, as rehearsed in **Halsbury's Laws of England**. It is to be noted that in determining the issue she placed reliance on the following passage from of **Halsbury's Laws of England**:

"At common law, for an instrument to be a deed it must be executed in the manner specified below by some person or corporation named in the instrument and (as to subject matter), it must express that the person or corporation so named makes, confirms, concurs in or consents to some assurance (otherwise than by way of testamentary disposition) of some interest in property or of some legal or equitable right, title, or claim, or undertakes or enters into some obligation, duty or agreement enforceable at law or in equity, or does or concurs in some other act affecting the legal relations or position of a party to the instrument or of some other person or

²⁰ Ground d.

corporation. ... Several classes of instrument under seal do not comply with all these requirements and are not therefore deeds. These classes include testamentary instruments executed, unusually, under seal; instruments certifying or recording a pre-existing legal status, relationship or position but not confirming some specific assurance; and instruments which are binding and effective before sealing or before delivery so that delivery, in the technical sense defined above, is superfluous and cannot meaningfully be accomplished as a separate or distinct step (and sealing also may have been superfluous). Thus the following documents, although sealed, are not deeds: a will, an award, a certificate of admission to a learned society, a certificate of shares or stock or a share warrant to bearer, an agreement signed by directors and sealed with the company's seal, a licence to use a patented article, letters of ordination."²¹ (Emphasis added)

[72] The foregoing extract from **Halsbury's Laws of England** captures what may be described as trite law. It is settled law that a deed at common law is an instrument executed by two or more persons in which certain undertakings or obligations are expressed to flow from one or some of those persons to another or others in respect of some legal or equitable interest, right or title which is legally enforceable. Testamentary instruments do not fall within that category of legal instruments. Applying that learning to the use of the term 'deed' in Article 978 of the **CCP** would exclude notarial wills from its ambit.

[73] For all of the reasons outlined in the preceding paragraphs, I am satisfied that although the learned judge did not have regard to the definitions of 'will' and 'deed' outlined in the **Civil Code** or to the Vagliano Rule, she nonetheless correctly determined that there is no legal basis within the **CCP** to conclude that the term 'deed' in Article 978 of the **CCP** includes a notarial will. I would therefore affirm her ruling at paragraph 14 of the judgment that it cannot be said that the 2019 will is considered a deed for the purposes of Article 978 et seq of the **CCP**.

²¹ Vol. 32 (2019), at para. 201.

[74] Mr. Joseph has been largely successful in his appeal. In keeping with the general rule that a successful party is entitled to his costs²² he is entitled to recover his costs of the appeal, such costs to be assessed if not agreed.

Disposition

[75] Accordingly, for the foregoing reasons, I would allow the appeal of the decision of the learned judge, except in relation to the fourth ground of appeal; set aside the orders made at subparagraphs 1 and 2 of paragraph 14 of her order and replace them with orders that Mr. Joseph, being a beneficiary is entitled to inspect the 2019 will and direct that Ms. Daniel grants permission to Mr. Joseph to inspect the 2019 will at a mutually agreed time.

[76] I would order that:

- (1) The appeal is allowed on all grounds except the fourth ground of appeal.
- (2) The fourth ground of appeal is dismissed
- (3) The fifth ground of appeal²³ is withdrawn and dismissed.
- (4) The orders made at subparagraphs 1 and 2 of paragraph 14 of the learned judge's order are set aside and replaced with the following:
 - a) The appellant Mr. Lucien Joseph as a beneficiary of the 2019 will of Hester Joseph is entitled to inspect the original of the said will.
 - b) The respondent Ms. Delia Daniel shall within 14 days of this order grant access to Mr. Lucien Joseph to inspect the original of the will of the deceased Hester Joseph executed on 18th April 2019, at the respondent's chambers on a day and at a time to be mutually agreed by the parties.

²² Civil Procedure Rules (Revised Edition) 2023 ('CPR'), rule 64.6.

²³ Ground e.

- (5) The respondent Delia Daniel shall pay the appellant Lucien Joseph the costs of this appeal to be assessed within 21 days of today's date, if not agreed.

[77] I wish to thank counsel on both sides for their assistance in this matter.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Trevor Ward
Justice of Appeal

By the Court

Chief Registrar