

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2012/0043

BETWEEN:

ELVIRA MCDONALD
YVETTE MALONEY

Claimants

and

NIGEL MALONEY

Defendant

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mrs. Patricia Marks-Minors of Counsel for the Claimants

Mr. Art Williams of Counsel for the Defendant

2024: May 24, 27,28

June 19

2025: February 3

JUDGEMENT

THOM J (Ag):

INTRODUCTION

- [1] The parties to this claim are the descendants of Adina Maloney (the testatrix) who died on the 30th day of March 2010. The testatrix had several children and grandchildren. The First

Claimant is the daughter of the testatrix, while the second claimant is the granddaughter of the testatrix. The defendant is the grandson of the testatrix.

- [2] On the 21st day of December 2010, probate of the estate of the testatrix was granted to the defendant in relation to a will of the testatrix dated 22nd October 2003.
- [3] The Claimants instituted these proceedings in which they seek among other things, revocation of the grant of the said probate No. 246 of 2010, that the defendant be restrained from distributing any part of the estate of the testatrix; a declaration that the last will and testament of the testatrix dated 5th January 2010 be deemed valid.
- [4] The Claimants claim that the testatrix in the 2010 will changed her executors and, in some instances, the beneficiaries of her estate. The Claimants further claim that the 2010 will, being the later will, it superseded the will of 22nd October 2003 in which probate was granted to the defendant.
- [5] The defendant in his defence and counterclaim contended that he had no knowledge of the 2010 will. It was only when he was served with this suit that he became aware of the defendant's contention that the deceased had made the 2010 will. He contended further that the 2010 will was fraudulent since the deceased suffered from dementia and was confined to her bed and could not move her hands. Further the signature of the testatrix as appears on the 2010 will is not the signature of the testatrix. In his counterclaim he seeks among other things a declaration that the 2010 will is void and of no effect, the 2003 will is valid and is the last will of the testatrix.

ISSUE

- [6] The only live issue in this case is whether the testatrix was of sound mind, memory and understanding at the time when the 2010 will was made.
- [7] It is not disputed that the burden of proof is on the claimants. It is also common ground that whether the testatrix had testamentary capacity at the time of making the 2010 will is a question of fact.

THE EVIDENCE

- [8] The claimants both testified and called three witnesses, Monica Maloney, Chezley Scipio and Veronica Trotman. The defendant testified and called two witnesses, Veno Maloney and Dr. Michael St. A. Goodluck.

Evidence of the Claimants

Elvira McDonald

- [9] Mrs. McDonald testified that she is one of the executors of the 2010 will. The Defendant is her nephew, being the son of her sister Veno Maloney.
- [10] Her sister Monica Maloney lived with the testatrix until her death. Mrs. McDonald lived in the United Kingdom for 25 years before returning to St. Vincent in 1986. She testified further that she always had a close relationship with the testatrix. While resident in the United Kingdom she occasionally sent money for the testatrix. After she returned to St. Vincent, she visited the testatrix and spoke with her regularly on the telephone. She assisted her with her personal affairs and helped her when she was administering her father's estate.
- [11] On 5th January 2010, while at her home, the testatrix telephoned her and expressed her desire to make a new will since Mr. Trotman who had witnessed her will had died. She went to the testatrix's home and found her in her room. The testatrix told her all that she wanted in her will, and she wrote it down. One of Monica's grandchildren typed up the will. She read it back to the testatrix, who agreed with the contents and signed the will.
- [12] The testatrix had also sent for Mrs. Veronica Trotman and Mr. Chezley Scipio. They were present when the testatrix stated her wishes. They also witnessed the testatrix sign the will and they also signed. Mrs. Trotman is a Justice of the Peace and a very good friend of the testatrix. Mr. Chezley Scipio is a family member and friend of the testatrix. After the funeral of the testatrix, the members of the family including Veno Maloney gathered at the testatrix's home for the reading of the 2010 will.
- [13] Under cross-examination Mrs. McDonald agreed that she was not on speaking terms with her sister Veno Maloney. She had permitted Veno Maloney to live in her house while she lived in the United Kingdom and Veno Maloney was claiming ownership of the house. She denied that this dispute caused the testatrix to not have a good relationship with her. She agreed that when the testatrix decided to make the 2010 will she got a copy of the 2000 will from Mrs. Trotman. The testatrix did not mention that she had made a will in 2003. She only became aware of the 2003 will after the testatrix died. She could not recall all the names mentioned in the 2010 will. Mrs. McDonald acknowledged that while the 2010 will stated that the testatrix's home was given to Sharon Maloney, the testatrix had already given the house to Sharon Maloney; but she stated further that the testatrix instructed her to write it down in the 2010 will and she wrote it down.
- [14] Ms. McDonald denied the testatrix was senile and bedridden. She acknowledged that the testatrix did not give anything to Yvette Maloney in the 2000 will. The deceased had given Yvette's mother Viva Maloney land in Harmony Hall. She further testified that the testatrix did not give her instructions to give Yvette Maloney anything in the 2010 will. She was shown the 2010 will and agreed Yvette's name was there; and added it was there because the testatrix would have so instructed.

Yvette Maloney

- [15] Yvette Maloney is the daughter of Viva Maloney and granddaughter of the testatrix. She testified that although she lived in the USA, she had a close relationship with the testatrix her grandmother. She spoke with her at least twice per week by telephone and she organized her 90th birthday party. During 2009 December, while visiting St. Vincent, there was an argument

between Veno Maloney and Jerry Maloney at the testatrix's home. After the argument, the testatrix directed her to visit her cousin Williams a lawyer and inform him of her desire to change her will. Mr. Williams was busy, but he gave her certain directions. About a week later, the testatrix made the 2010 will in the presence of a Justice of the Peace Mrs. Veronica Trotman and Mr. Chezley Scipio as directed by Mr. Williams.

- [16] Elvira McDonald wrote down the testatrix's instructions. The instructions were typed and then read over to her, and she agreed with the contents and signed the will. Mr. Scipio and Mrs. Trotman then signed.
- [17] Yvette Maloney further testified that while the testatrix was getting older, she was still holding conversations with her family and friends and had no difficulty recognizing persons.
- [18] Under cross-examination she reiterated that her grandmother the testatrix gave the instructions and her aunt Elvira McDonald wrote down the instructions. Yvette Maloney could not recall every instruction given by the testatrix to Elvira McDonald. She only became aware of the 2003 will sometime after the 2010 will was read. Yvette Maloney denied the testatrix was bedridden but testified that the testatrix needed assistance, since she could not walk around on her own such as walking down the stairs.

Defendant's Evidence

Monica Maloney

- [19] Monica Maloney testified that she is the daughter of the testatrix. She lived with the testatrix all her life and she still reside at the testatrix's former home at Stubbs. She took care of the testatrix. The testatrix suffered from hypertension and visited the district clinic where Dr. Verony attended to her. The testatrix also saw Dr. Goodluck about twice.
- [20] On 5th January 2010, the testatrix made her will in the presence of Mrs. Veronica Trotman, Mr. Chezley Scipio and Yvette Maloney. The testatrix gave instructions to Elvira Maloney, and she wrote down the instructions. Monica Maloney testified further that she was not present throughout the making of the will. When the testatrix was giving the instructions, Elvira McDonald was writing down the instructions. After the funeral the family including Veno Maloney gathered at the testatrix's former home in Stubbs and the 2010 will was read. Veno Maloney was upset.
- [21] Under cross-examination Monica Maloney testified that the testatrix was not upset with Elvira McDonald. Rather it was Veno who was claiming Elvira Mc Donald's house. She denied that the 2003 will was a valid will. She denied the signature was the testatrix's signature. She noted that the witnesses were the Attorney-at-law Mr. Moet Malcolm's secretaries. She stated Mr. Malcolm never visited the testatrix's home and the testatrix never visited Mr. Malcolm's office. The testatrix did not do anything without telling her. She was her caretaker. She denied that Veno Maloney assisted in taking care of the testatrix. The testatrix saw Dr. Goodluck at the Stubbs clinic. The testatrix also saw nurse Cynthia Bedwell at the Stubbs clinic.
- [22] Monica Maloney further testified that she left the room after about 10-15 minutes when the testatrix was giving the instructions for the will, but she was present when the will was signed by the testatrix. She denied that the testatrix was senile. She reiterated that she lived with the testatrix and took care of her needs.

Veronica Trotman

- [23] Mrs. Trotman testified that she is a Justice of the Peace. She knew the testatrix all her life. She visited the testatrix every few weeks. She did not observe her to have any problems with her memory. The testatrix was able to converse with her. Her home is close to the testatrix's home. Yvette Maloney spoke to her about the testatrix's wish to make a will and that the testatrix wanted her to be present. She picked up her Justice of the Peace stamp and she went over to the testatrix's home. The testatrix was in her bedroom. She also met Mr. Chezley Scipio and Mrs. Elvira McDonald there. They were all having a conversation.
- [24] The testatrix told her that she was making her will, and she wanted her to be a witness. The testatrix also told her that she had made a will before and she wanted to make a new will. The testatrix instructed her daughter Elvira McDonald how she wanted her property to be divided. Elvira McDonald wrote down the instructions and then went downstairs to get it typed. When Elvira McDonald returned, she read the contents of the will and the testatrix agreed with the contents and then signed the will. Mr. Scipio signed, then she signed and placed her Justice of the Peace stamp on the will. They continued to talk and later she went to her home. Mrs. Trotman reiterated that she did not observe the testatrix to have any memory problems and on the day of the making of the will she seemed to be her "normal self".
- [25] Under cross-examination Mrs. Trotman testified that she had a very close relationship with the testatrix. On the 5th January 2010 when she went to the testatrix's home, the testatrix was sitting in a chair in her bedroom. She also met Mr. Chezley Scipio and Elvira McDonald in the bedroom.
- [26] Mrs. Trotman testified further that she would usually go and visit the testatrix. Sometimes when she visited, the testatrix would be sitting in her porch.
- [27] On the 5th January 2010, she was at the testatrix's home for more than two (2) hours. The process took some time. Mrs. Trotman could not recall from memory all of the instructions the testatrix gave to Elvira McDonald. She testified that the testatrix remembered the names of her children and grandchildren and bank account numbers.
- [28] The will was read over to the testatrix, and she agreed with everything. The testatrix kept saying "nothing is to be sold but passed down to generations". She also recalled the testatrix saying that the house was for Sharon. The testatrix mentioned more than one bank account. She did not observe any senility in the testatrix. Her memory was very good.
- [29] When Elvira McDonald returned from downstairs, she had about three (3) or four (4) copies of the will. Elvira McDonald gave herself and Chezley Scipio a copy each and they followed along when Elvira McDonald read the will to the testatrix. After each bequest, Elvira McDonald stopped, the testatrix acknowledged it was correct. Mrs. Trotman reiterated that the testatrix was not bedridden. The testatrix signed the will. Mr. Scipio was present throughout the process. During the time Elvira McDonald went downstairs to get the will typed, Mr. Scipio spoke with the testatrix.

Chezley Scipio

- [30] Mr. Scipio testified that the testatrix was his great aunt. He lived in Stubbs within close proximity to where the testatrix lived and he visited her regularly. They had a very good and close relationship at all times. Monica Maloney lived with her until she died. On the day of the making of the will, he went to the testatrix's home after the testatrix sent her granddaughter for

him. He met the testatrix in her bedroom. Also present were daughters, Elvira and Monica, and her granddaughter Yvette. The testatrix told him she wanted to make a new will since Albert Trotman had died and she wanted to make certain changes to her will and she wanted him to be a witness.

- [31] The testatrix stated what she wanted in the will and Elvira McDonald wrote it down. The will was typed. While the will was being typed, they spoke with the testatrix in the room. The will was read over to the testatrix, she agreed it was correct, and she signed the will, he signed the will and Mrs. Veronica Trotman signed.
- [32] Some years before the testatrix made the 2010 will she had “fallen out” with her daughter Veno Maloney and wanted Veno’s name removed from her bank accounts because she no longer trusted Veno. She tried to remove Veno’s name but was unsuccessful since the Bank required Veno’s presence to make the change.
- [33] The testatrix was in “good spirits” on the day she made the 2010 will.
- [34] Under cross-examination, Mr. Scipio testified that he witnessed the deceased’s will in 2000. He was not aware of the 2003 will. He denied that the deceased was bedridden at the time she made the 2010 will. He could not recall how long he remained at the deceased home on the day the 2010 will was made.
- [35] He reiterated that he was a frequent visitor to the testatrix home. He also could not recall all of the instructions given to Elvira McDonald by the testatrix. He lives about two hundred and fifty (250) feet away from the testatrix’s home. He also reiterated that the testatrix did not suffer from memory loss.

Evidence of the Defendant

Nigel Maloney

- [36] The defendant Nigel Maloney testified that he is the son of Veno Maloney and grandson of the testatrix. Himself and Albert Trotman (now deceased) are named as executors of the 2000 will. Prior to the 22nd of October 2003 the testatrix invited him to her home and there he met Mr. Albert Trotman. The testatrix informed them she was going to make a new will and asked them to be executors of her will. They agreed. Later in the month of October 2003, the testatrix gave him the original will it was dated 22nd October 2003.
- [37] The testatrix was annoyed with Elvira McDonald due to a dispute that Elvira McDonald had with his mother concerning a dwelling house in which his mother resided, and which Elvira McDonald was trying to claim as her own.
- [38] The testatrix had removed Elvira McDonald’s name from the 2000 will.
- [39] Around 2008 he observed that the testatrix was getting senile. During his visits he heard her speaking of seeing her dead relatives and she appeared to be speaking to them.
- [40] Dr. Goodluck was the testatrix’s doctor. He would visit her at her home to provide medical care. Sometime before 2010 the deceased suffered a stroke. She was bedridden and she was assisted by her daughters Veno and Monica Maloney.
- [41] The testatrix and Chezley Scipio did not have a good relationship because Chezley Scipio was revealing the contents of the 2000 will to persons in the village, therefore the testatrix did not

want him to be a witness of the 2003 will. On 22nd October 2003 the deceased executed a deed of gift of her home and surrounding lands to her granddaughter Sharon Maloney.

- [42] His mother showed him the 2000 will and he saw that the two lots which were bequeathed to Elvira McDonald were crossed out and the name Dave Stapleton was written in place of Elvira McDonald. Elvira McDonald's name was also marked out from the account number 60500/416 at Barclays.
- [43] Under cross-examination Nigel Maloney testified that he was not present when the 2003 will was made. In 2010 his mother lived in a house next to the deceased. He could not recall whether his mother mentioned a will was read after the funeral.

Veno Maloney

- [44] Veno Maloney testified that she is the daughter of the testatrix. The testatrix made a will in 2000. The executors of the will were Nigel Maloney and Albert Trotman.
- [45] Elvira Maloney had an unfinished house next to the testatrix's house when Elvira Maloney migrated to the United Kingdom. Around 1975 the testatrix gave her permission to occupy the unfinished house and told her to take it. Elvira Maloney had given the unfinished house to the testatrix. She repaired the house and made it habitable. Elvira McDonald subsequently built a house at Ratho Mill where she lives since returning to St Vincent and the Grenadines with her husband. Elvira McDonald attempted to claim the house that she gave the testatrix, but the testatrix rejected her claim. As a result of this dispute the deceased made the 2003 will and removed Elvira McDonald from the 2000 will. The testatrix also took away the key for the safety deposit box at National Commercial Bank from Elvira McDonald and removed her name from the account at Barclays Bank.
- [46] In 2008 she observed the testatrix was losing her memory. In 2009 she had to be assisted to get out of her bed. The testatrix could not move her hands. She had to be fed. She and her sister Monica Maloney looked after her.
- [47] Dr. Michael Goodluck was the testatrix's doctor. He provided her medical care at her home.
- [48] A few days after April 2010, Elvira McDonald while at the testatrix's house stated she has the deceased's will. Elvira McDonald refused to give her a copy of the will. The signature of the testatrix on the 2010 will is different from her signature on the 2003 will.
- [49] Dr. Goodluck gave her a medical certificate showing that the testatrix was suffering from senile dementia since 2008.
- [50] Under cross-examination Veno Maloney testified that between 2001-2010 herself and Monica Maloney took care of the testatrix. The testatrix had a stroke around 2009-2010. The testatrix could not move. Dr. Goodluck visited her at her home.
- [51] Mr. Chezley Scipio is her cousin. He used to pass by the deceased house. She did not see Mrs. Trotman at the deceased home in 2010. In 2017 she removed from living next to her testatrix's house. The 2010 will was read after the funeral but she asked for a copy, and they did not give her a copy. She told her son Nigel Maloney about the 2010 will after the claimants

instituted these proceedings against him. She was advised by her attorney Mr. Moet Malcolm to take the 2003 will home and say nothing to anyone until the death of the testatrix.

- [52] Dr. Goodluck last visited the testatrix's home in January 2010. Dr. Goodluck is not her friend. She got a report from Dr. Goodluck in 2012 after these proceedings were instituted against her son Nigel Maloney.

Dr. Michael Goodluck

- [53] Dr. Goodluck's witness statement being very brief, I will outline it in its' entirety. It reads:

"I am a Medical Officer registered as such to practice Medicine in the state of Saint Vincent and the Grenadines.

Mrs. DINA MALONEY of Stubbs Village was one of my patients. On 17th January 2008 she was assessed by me to be suffering from progressive senile dementia to the time of her death on 3rd March 2010.

MEDICAL STATEMENT FOR MRS ADINA MALONEY

TO WHOM IT MAY CONCERN

This is to state that the aforementioned ninety-four-year-old elderly lady of Stubbs Village St. Vincent had clinical hypertension. This pleasant lady, however also had progressive senile dementia when assessed on the 17th of January, 2008 to the time of her death 30th March, 2010.

Mrs. Maloney died as a result of a Cerebro-Vascular accident (CVA/Stroke).

Respectfully

Dr. Michael Goodluck

District Medical Office D.M.O"

- [54] On the 11th day of October 2023, the learned judge on application made by Nigel Maloney on the 7th day of July 2023, granted Nigel Maloney leave to call Dr. Goodluck as an expert witness in the field of medicine. Dr. Goodluck filed the expert report on the 14th day of December 2023.
- [55] Dr. Goodluck amplified his witness statement by stating the testatrix could not sign her name. When he visited her in 2010, the testatrix had advanced dementia. She was unable to move. She was just screaming or staring into space. He could not recall the date in January 2010 when he visited her. I will deal with Dr. Goodluck's expert report later in this judgment.
- [56] Under cross-examination Dr. Goodluck agreed that he did not mention his visit to the deceased's home in 2010 in the statement he gave Ms. Veno Maloney in 2012. His visit in January 2010 was a normal shut in visit. He agreed that patients suffering from dementia could have good days. In the advanced stage of dementia there is complete cognitive impairment. The testatrix could not hold a conversation.

SUBMISSIONS

- [57] Mr. Marks for the claimants submitted that the 2010 will was in conformity with Section 12 of the Wills Act Cap 493. The section reads:

“12. (1) No will shall be valid unless –

- (a) It is in writing, and signed by the testator; or by some other person in his presence and by his direction;
- (b) It appears that the testator intended by his signature to give effect to the will;
- (c) The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) Each witness either –
 - (i) attests and signs the will, or
 - (ii) acknowledges his signature;

in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.

- [58] He further submitted that the test of Testamentary Capacity is as set out in **Theobald on Wills** 15ed. p.31-32. Where it is stated:

“Test of Testamentary capacity. In order to have testamentary capacity a testator must understand:

- (a) the effect of his wishes being carried out at his death, though it is not necessary that he should view his will with the eye of a lawyer and comprehend its provisions in their legal form;
- (b) the extent of the property of which he is disposing; and;
- (c) the nature of the claims on him. The testator must have “a memory to recall the several persons who may be fitting objects of the testator’s bounty, and an understanding to comprehend their relationship to himself and their claims upon him” so that he can decide whether or not to give each of them any part of his property by his will.

The same test applies whether the testator has been subnormal from birth or has suffered impairment of the mind during his lifetime, whether through injury, physical or mental illness, senility or addiction.”

- [59] Learned Counsel also referred to the cases of **Lola Veronica Hamilton v Jermaine Bramble** **MNIHCV 2012/0004**; **Hoff v Atherton [2004] EWCA Civ 1554** and **Gill v Woodale and Others 2010 EWCA 1430**. In the latter case, Lord Neuberger MR stated:

“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 persuade themselves that evidence exists, which shows that the Will did not could not or was unlikely to represent the intention of the testator, or the testator or 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 will result in many estates being diminished by substantial legal costs. This fundamental English Law is also expressed in terms of freedom of testamentary disposition.

Further such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second hand way, and where much of the useful potential second hand evidence will be often partisan and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in the **Estate of Fuld (deceased) No. 3** “where all is dark it is dangerous for a court to claim it can see the light. That observation applies with almost equal force when all is murky and uncertain.”

- [60] Learned Counsel urged the Court to accept the evidence of the claimants and their witnesses that the deceased was of sound mind when she executed the 2010 will and reject the evidence of the defendant and his witnesses including Dr. Michael Goodluck. Learned Counsel emphasized that Nigel Maloney was not domiciled in St. Vincent and the Grenadines at the time of the making of the 2010 will; nor was Veno Maloney living at the testatrix's home. Mr. Marks submitted further that in contrast, the evidence of the claimants is that Monica Maloney has lived at the deceased's home all her life and continues to live there. She was the caretaker of the deceased. Mr. Chezley Scipio who is the nephew of the deceased was a regular visitor to the deceased's home. Also Mrs. Veronica Trotman the Justice of the Peace was also a friend and a visitor of the deceased.
- [61] In relation to Dr. Goodluck, Mr. Marks referred to his witness statement dated 11th June 2012 where Dr. Goodluck stated that he visited the deceased on 17th January and determined that she was suffering from dementia. Mr. Marks also referred to Dr. Goodluck's medical report dated 19th April 2012 which was issued to Veno Maloney after this claim was instituted and Mr. Marks emphasized that no mention was made by Dr. Goodluck in any of the abovementioned documents that he visited the deceased in January 2010. Rather it was not until Dr. Goodluck made an expert report on 4th December 2023 that Dr. Goodluck first mentioned he visited the deceased in early January 2010 and that she was bedridden and screaming and staring into space and he could not correspond with her. Mr. Marks noted the expert report was made fourteen (14) years after the alleged visit in early January 2010. Further Dr. Goodluck testified that the reports in relation to his visits were lost. The expert report was therefore based on his memory. Mr. Marks urged the Court to find that Dr. Goodluck's evidence was unreliable.

Defendant's Submissions

- [62] Learned Counsel Mr. Richard Williams submitted that for a will to be valid it must have been made in compliance with section 12 (1) of the Wills Act. Learned Counsel also relied on the case of **Key v Key** [2010] 1WLR 2020 at paragraphs 97 and 98 which read as follows:

“The burden of proof in relation to testamentary capacity is subject to the following rules. (i) While the burden starts with the propounder of the will to establish capacity, where the will is duly executed and appears rational on its face, then the Court will presume capacity. (ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity. (iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity none the less: see generally **Ledger v Wooten** [2008] WLR 23J, para 5, per Judge Norris QC .

98. Finally, the issue as to testamentary capacity is from first to last, for the decision of the court. It is not to be delegated to experts, however eminent, albeit that their knowledge, skill and experience may be an invaluable tool in the analysis affording insight into the working of the mind otherwise entirely beyond the grasp of laymen, including for that purpose, lawyers and in particular judges.”

[63] Learned Counsel also relied on the following passages from **Halsbury Laws Vol. 102 [2021]**

“48. Soundness of mind, memory and Understanding

It is necessary for the validity of a will that the testator should be of sound mind, memory and understanding. These words have consistently been held to mean sound dispositions of property to which the testator is about to affix his signature. Apart from persons who cannot make a valid will through unsoundness of mind in the ordinary sense of the term, a person who is born deaf, dumb, and blind has been said to be incapable of so doing. Moreover, a person who is born deaf and dumb, but not blind is prima facie, incapable but he can make a valid will if he is shown to have capacity and to understand what is written down. Dementia arising from advanced age or produced by alcoholism or any other cause may destroy testamentary powers although it seems that soundness of mind, memory and understanding, sufficient to give testamentary capacity, as required by the established authorities can subsist even in circumstances where there is clear evidence of some degree of dementia. There will be cases where the testator will not have sufficient understanding, in the absence of an explanation, but the test is issue-specific and must be considered in the light of the nature and complexity of the particular transaction.

896. Medical evidence as to testamentary capacity.

The value and function of medical evidence on the issues affecting testamentary capacity are sometimes difficult to assess. The personal medical knowledge of the testator’s own doctor, or of a psychiatrist who has had the opportunity of examining the testator at the time of his will must normally carry great weight. It is important in cases of doubt to try to have the proposed testator medically examined after some legal explanation of the criteria discussed in the paragraphs which follow. There is no specific diagnosis which necessarily denotes incapacity, but while the world at large contrast the doubtful cases with the sane, the physician has at hand the alternative contrast with the insane.”

[64] The defendant advanced three main reasons why the testatrix did not have testamentary capacity to make the 2010 will, being:

- (a) Firstly- The property at Stubbs was already given to the testatrix’s granddaughter Sharon Maloney at the time of the 2010 will.
- (b) Secondly the claimants’ witnesses were unable to recall the instructions the testatrix gave to Elvira Maloney.
- (c) Thirdly, the evidence of the defendant’s witnesses is reliable, particularly the evidence of Dr. Goodluck.

ANALYSIS

- [65] There is no dispute about the applicable law. Both sides agree that for a will to be valid, the requirements of section 12 of the Wills Act must be satisfied. It is also common ground that the applicable principles in relation to testamentary capacity are the principles outlined in Halsbury Laws referred to by learned counsel Mr. Richard Williams and the cases referred to by both counsel.

The Property at Stubbs

- [66] Learned Counsel invited the Court to examine carefully the 2000 will, 2003 will and the 2010 will. Learned Counsel submitted that while in the 2000 will the deceased residence at Stubbs was bequeathed to her granddaughter Sharon Maloney, no mention of it was made in the 2003 will, because by that time the deceased had already gifted the property to Sharon Maloney. However, the bequest to Sharon Maloney is stated in the 2010 will. Learned Counsel submitted this shows that the deceased was suffering from loss of memory and did not have the testamentary capacity to make the 2010 will. Further the claimants had the 2000 will in their possession, and they simply copied the 2000 will and added benefits to themselves.
- [67] I do not accept Counsel's submission. The mere fact that the bequest to Sharon Maloney is repeated is not a sufficient basis on which to determine that the deceased did not have testamentary capacity. Both witnesses who were close friends and in the case of Mr. Scipio a close relative, testified that the testatrix stated that her house was for her granddaughter Sharon Maloney. Further all the bequests in the 2010 will were read back to the testatrix and she agreed and signed the will. Contrary to Counsel's submission, the bequest to Elvira McDonald is the same in the 2010 will as the 2000 will. Elvira McDonald and indeed none of the witnesses for the claimants were aware of the 2003 will at the time of the making of the 2010 will. Veno Maloney testified that her lawyer Mr. Malcolm advised her to tell no one about it until after the death of the testatrix. The differences between the 2000 will and the 2010 will are, (a) in the 2000 will, the executors are Nigel Maloney and Albert Trotman (now deceased), while in the 2010 will the executors are Elvira McDonald and Yvette Maloney, and (b) in the 2000 will, the money at the National Bank was given to Veno and Elmona Maloney, while in the 2010 will it is given to Monica and Elmona Maloney. Further in the 2000 will Yvette Maloney is not named in the bequest to the grandchildren of the lands at Calder Ridge, but she is included in the 2010 will.
- [68] It is not unusual for a testator/testatrix to change his/her will. At the time of the making of the 2010 will Albert Trotman one of the executors in the 2000 will was deceased. The defendant who was the other executor was not resident in Saint Vincent and the Grenadines. The mere fact that there is a change of beneficiaries in some instances does not mean that the testatrix does not have testamentary capacity. The 2010 will was not more complex than the 2003 or 2000 will. The variations in the 2010 will were few. All the children and grandchildren who are involved in this litigation are beneficiaries under the 2010 will.

Instructions of the Testator

- [69] Learned Counsel submitted that the witnesses could not recall the instructions given by the testatrix. Their responses were general and not specific. In some instances, they claimed they could not recall exactly what was said due to the passage of time.
- [70] Learned counsel also reminded the court that, Elvira McDonald did not produce the instructions which were given to her by the testatrix from which the signed will was made. This is not disputed.
- [71] In my view the fact that the witnesses could not recall the details of the bequests and the handwritten instructions recorded by Elvira McDonald were not produced does not impact whether the testator had capacity at the time of the making of the will. The evidence is the will was read over to her, each bequest separately and the testatrix agreed it was correct.
- [72] Learned Counsel also submitted that the defendants' evidence was conflicting. Learned Counsel referred to the evidence of Monica Maloney and Chezley Scipio who testified under cross-examination that the testatrix gave instructions that the property at Ratho Mill be bequeathed to Viva Maloney but there was no such mention in the 2010 will. Learned Counsel urged the Court to find that the evidence of the Claimants was unreliable.
- [73] I agree that there is no mention of Viva Maloney in the 2010 will or in fact Viva's name is not mentioned in the 2000 or 2003 will. It must be noted that in the 2010 will, there are a total of eight different bequests made to a total of 27 persons all children and grandchildren of the testatrix and some persons were named in more than one bequest. In my view what was important was the testimony of Mrs. Trotman the Justice of the Peace who witnessed the 2010 will, that each bequest was read over to the testatrix separately and she agreed it was correct. The 2010 will was not read over as a whole and then the testatrix agreed. The testatrix understood the bequests she made.

The Expert Evidence

- [74] Learned Counsel submitted that the Court should place great weight on the expert report of Dr. Goodluck and his oral evidence where he testified that he was the testator's doctor from 2008-2010. Learned Counsel emphasized that Dr. Goodluck being the doctor who attended to the deceased from 2008 to 2010, he would have had personal knowledge of the issues which would have affected her ability to execute the 2010 will. Dr. Goodluck's testimony is that the testatrix was suffering from mild dementia since his visit in January 2008. On his last visit in early January 2010, while he did not conduct a "MMSE", the testatrix was bedridden, she could not communicate. She was either screaming or staring into space. He determined that she was in a complete state of dementia where there is complete cognitive impairment.
- [75] Learned Counsel reminded the Court that the claimants did not lead any expert evidence. The evidence of the claimants failed to establish that the testatrix had testamentary capacity.
- [76] Indeed Dr. Goodluck was the only expert witness who testified. The legal principles on how a Court should approach expert evidence is well settled and is succinctly outlined in the case of **AB V BG and Others 2009 EWCA**. There the Court determined that the weight to be given to the expert evidence depends on how the expert evidence is assessed in the context of all the other evidence. The Court further stated:

“It is of course, axiomatic that judges are entitled to disagree with an expert witness. But this proposition also has an equally obvious corollary. There must be material upon which the judge in question can safely ground his or her disagreement, and he or she must fully explain the reasons for rejecting the expert’s evidence.”

- [77] Also, in **Pacific Recreation Pte Ltd v Sy Technology Inc [2008] SGCA**. The Court emphasized that Courts should look at the expert’s reasoning. An expert must show the analytical process by which they reached the conclusion.
- [78] The above authorities and authorities such as **Jacto Transport Ltd v Derek Hall 2005 EWCA 1527** emphasize that expert evidence does not trump all evidence, Judges are entitled to disagree with an expert witness.
- [79] Dr. Goodluck is an experienced doctor. He received his Doctor of Medicine from St. George’s University School of Medicine. From 2001 to presently, he practices as a General Medical Practitioner. In 2014 he participated in a specialist course in Health Management for older persons. The course was organized by the Pan-American Health Organization.
- [80] Dr. Goodluck testified he was the testatrix’s doctor from 17th January 2008, until her death on 30th March 2010. During this period, he saw her four times. Of the four times, he gave evidence of two of those visits. The first on 17th January 2008 and a visit in early January 2010. Dr. Goodluck could not give a specific date. It must be noted that the 2010 will is dated 5th January 2010, the date the defendants testified the 2010 Will was made.
- [81] In his expert report Dr. Goodluck stated that when he saw the testatrix on 17th January, 2008, he conducted an informed Mini Mental State Examination (MMSE) and formed the opinion that the testatrix was suffering from mild dementia which is at the lower end of the scale for dementia. There is no other evidence from Dr. Goodluck of any further test on any other occasion. Dr. Goodluck provided no record of any of his visits or his examinations. Indeed, under cross-examination he testified that all of the records are lost. His report was based purely on his memory.
- [82] In relation to his visit of the Testatrix in early January 2010, he conducted no tests, he testified the testatrix was either staring into space or screaming. She could not communicate. This was the extent of Dr. Goodluck’s evidence in relation to his opinion that the testatrix was suffering from severe dementia which is the highest on the scale of dementia.
- [83] Dr. Goodluck further testified that in or around 2012 he prepared a detailed report which was provided to the defendant Nigel Maloney. Due to passage of time, the report, the documents, copies of his notes are all lost. Nigel Maloney who made a statement and who testified at the trial gave evidence about the testator’s health in his witness statement in paragraphs 22-27 as follows:
- “22. Around 2008 I observed that my aforesaid grandmother was getting senile.
24. (sic) During my visits to her she was losing her memory and she was saying strange things, for example, she was saying that she was seeing her relatives who had died and appeared to be having conversation with them.
25. I know that her doctor was Dr. Goodluck who used to visit her at her home for medical care.

26. I know that some time before the year 2010 that my grandmother the deceased had suffered what was supposed to be a stroke.

27. She was bedridden and had to be moved in her bed by my mother Veno Maloney and Monica Maloney.”

- [84] Nigel Maloney made no mention of receiving a detailed report of the health of the testatrix from Dr. Goodluck.
- [85] Having examined Dr. Goodluck’s expert opinion and considered the submissions of both Counsel I find Dr. Goodluck’s testimony to be unreliable. Dr. Goodluck is a District Medical Officer. He had only visited the testatrix on approximately four occasions over a period of two years. Dr. Goodluck could not recall exactly when in January 2010 he visited the testator. His evidence is vague being “early January”. The time for testamentary capacity is at the time of the making of the will. The time between Dr. Goodluck’s last visit in view of his evidence being early January 2010 and the time of the preparation of the expert report, was almost fourteen (14) years.
- [86] Dr. Goodluck’s evidence must be considered in the context of all of the evidence of the other witnesses, in particular those who testify that they were present when the 2010 will was made, being, Elvira McDonald, Mr. Scipio and Mrs. Trotman. Also, those persons who took care of the testatrix and visited her regularly. It is not disputed that Monica Maloney who lived at the testatrix’s residence took care of her. I accept that Veno Maloney also took care of the testatrix, but she was not living at the testatrix’s home but close by. The other witnesses Mr. Scipio and Mrs. Trotman also live within close proximity of the testatrix’s home and were friends of the testatrix and visited the testatrix regularly.
- [87] The testatrix and Mr. and Mrs. Trotman had a good relationship. Mr. Trotman was the executor of the testatrix’s 2000 will, and he is also named as executor of the 2003 will. Mr. Trotman died in 2008. Mrs. Trotman knew all the testatrix’s children and grandchildren. Mrs. Trotman’s testimony was not contradicted. Her testimony in relation to the making of the 2010 will was very clear. She was present throughout. She explained how the testatrix’s instructions were recorded and read back to her individually and she agreed to all of them. While I accept that the testatrix had some mobility issues, having considered all the evidence, I find the evidence of Mrs. Trotman to be very cogent. I find Mrs. Trotman to be a credible witness. Her evidence was consistent throughout the rigorous cross-examination by Mr. Richard Williams. I find that the mobility issues had no impact on the testatrix’s testamentary capacity at the time of making of the 2010 will.
- [88] Neither Nigel Maloney, nor his mother Veno Maloney was present when the 2010 will was made. Indeed, their testimony does not indicate the last time they saw the testatrix prior to the 5th January 2010 when the 2010 will was made. Dr. Goodluck gave no evidence of the progress of dementia on the two visits between 2008 when he diagnosed the testatrix with mild dementia and 2010 when he opined, she had severe dementia. Indeed Dr. Goodluck gave no evidence in relation to the said visits. As stated earlier, Dr. Goodluck had no notes of his visits from which to prepare the expert report. It was simply from memory of events 14 years ago. I accept the principles as stated earlier in Halsbury’s Laws that “The value and function of medical evidence on the issues affecting testamentary capacity are sometimes difficult to assess. The personal medical knowledge of the testator’s own doctor, or of a psychiatrist who has had the opportunity of examining the testator at the time of his will must normally carry great weight.” In

this instance however, for the reasons stated above, I find Dr. Goodluck's testimony to be unreliable.

CONCLUSION

- [89] In conclusion, I find as a fact that the testatrix was of sound mind and memory when she made the 2010 will. She had the testamentary capacity to make the 2010 will. The claimants' claim succeed.
- [90] It is settled law that a later valid will supersede an earlier will. It therefore follows that the 2003 will was superseded by the 2010 Will and the grant of probate to the defendant Nigel Malony must be revoked.
- [91] I accept Nigel Maloney's testimony that he has not distributed any of the assets of the estate of the testatrix. The claimants led no evidence in support for the grant of a restraining order. I will therefore make no restraining order against Nigel Maloney.
- [92] The Claimants also did not adduce any evidence in relation to any damage suffered. I will therefore make no award of damages.

ORDER

[93] **It Is Ordered**

- (1) The Claimants claim succeeds. The defendant's counterclaim is dismissed.
- (2) It is declared that the Will of Adina Maloney dated the 5th of January 2010 is deemed to be a valid will.
- (3) The Grant of Probate Number 246 of 2010 granted on the 21st day of December 2010 is hereby revoked.
- (4) The Defendant shall pay the claimants costs in the sum of \$10,000.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar