

IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 131 OF 1998

BETWEEN:

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

- and -

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

- and -

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

- and -

**GILLIAN CHUNG**, personally and in her  
capacity as Administratrix ad colligenda bona  
by Order of Court dated 4<sup>th</sup> day of February,  
1994.

Appellant (Defendant)

- and -

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

Respondent (Plaintiff)

BEFORE:

<b>Hon. Madam Justice Desiree P. Bernard</b>	-	<b>Chancellor</b>
<b>Hon. Madam Justice Claudette M.C. Singh</b>	-	<b>Justice of Appeal</b>
<b>Hon. Mr. Justice Nandram Kissoon</b>	-	<b>Justice of Appeal</b>

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

**2003:** May 13  
June 12, 26  
November 19

## J U D G M E N T

### BERNARD, C. delivered the judgment of the Court:

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

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

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



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

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

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

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

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

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

- (a) A visual comparison between the proven signatures of the deceased and his purported signature on the will which reveals a crude attempt at forgery of his signature.
- (b) Failure of witnesses Jean Sahai and Clifton Bacchus as well as the Respondent to provide any evidence as to when or where the will was prepared or who prepared it.
- (c) On the alleged date of execution of the will the deceased was only 26 years old, healthy and wealthy and a successful businessman.
- (d) Total exclusion of his own family in the will, i.e. his reputed wife and young child.
- (e) Only person who knew beforehand that a will was being prepared was one of the witnesses, Jean Sahai.

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

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

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

