THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHPB 2009/0207

IN THE ESTATE OF EDRIS SILSTON, Deceased

BETWEEN:

LEROY SILSTON

Claimant

and

RUTHLYN CHAMBERS

Defendant

Appearances:

Mr. Kendrickson Kentish and Ms. Kathleen Bennett for the Claimant
Ms. Eleanor Clarke-Solomon for the Defendant

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2011: October 19, 20
2012: March 15

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JUDGMENT

[1] **MICHEL, J:** Edris Silston was a successful Antiguan businesswoman who operated a thriving clothing store in St. John's. She got married to the Claimant, Leroy Silston, when she was in her late forties and never had any children of her own. She did however have several family members,

including sisters, brothers, nieces, nephews and great nieces and nephews. Mrs. Silston died on 14th July 2009 at the age of 86.

[2] When Mrs. Silston's died in 2009 she left a Will dated 16th January 2008 (hereafter referred to as the Will). The Will named Mrs. Silston's close friend, Janet Arrindell, as the executrix and made bequests and legacies of sums of money, proceeds of named bank accounts, company shares and real estate to various beneficiaries, including Mrs. Silston's church, her employees, her brother, her nephews, her nieces and her great niece and great nephew, and also to the Claimant.

[3] The executrix named under the Will having predeceased Mrs. Silston, the Defendant, Ruthlyn Chambers - as a niece and one of the residuary legatees and devisees under the Will - published a notice on 29th July 2009 of her intention to make application for a grant of letters of administration (with will annexed) of the Estate of Edris Silston.

[4] The Claimant - as the husband and one of the parties having an interest in the Estate of Edris Silston - filed a caveat on 31st July 2009 forbidding anything being done in the Estate of Edris Silston unknown to Messrs Lake & Kentish, the Attorneys-at-Law representing him.

[5] On 1st October 2009, an application was made on behalf of the Defendant for an order that letters of administration (with will annexed) of the Estate of Edris Silston be granted to the Defendant. The application was accompanied by several supporting documents, including the oath of administration sworn to by the Defendant, which gave the gross value of the Estate of Edris Silston as $20,000,000.

[6] On 9th October 2009 a warning to caveator was issued by the Deputy Registrar of the High Court giving the Claimant eight days from the date of service of the warning on him to take certain actions, failing which the Court may proceed to issue a grant of administration notwithstanding the Claimant's caveat.

[7] The Claimant responded by filing an application on 20th October 2009 (with affidavit in support) for the continuance of the life of the caveat and for the just disposition of a probate action between the Claimant (as Caveator) and the Defendant (as the person claiming to be entitled to a grant of probate in the Estate of Edris Silston). In his application, the Claimant set out the grounds of his opposition to the grant to the Defendant of letters of administration (with will annexed) as follows:

1. The said Edris Silston lacked the mental capacity to execute a will on or about 16th January 2008;

2. The said Edris Silston did not know and approve of the contents of the will purported to be executed by her on or about 16th January 2008;

3. The said will was executed in suspicious circumstances, namely, at a time when Edris Silston lacked the requisite mental capacity to execute a will;

4. The said will is void and of no effect;

5. The Caveator is the widower of Edris Silston and is the person entitled to a grant of Letters of Administration in the captioned estate.

[8] An affidavit in response sworn to by the Defendant was filed on 5th November 2009 and an affidavit dated 13th November 2009 was sworn to by Franklyn Clarke QC, who had prepared and witnessed the execution of the Will.

[9] The Claimant's application was heard on 19th November 2009 and a decision on the application was given by a written judgment dated 16th April 2010, which granted leave to the Claimant to file a claim challenging the validity of the Will.

[10] Pursuant to the Order of 16th April 2010, the Claimant filed the present suit on 14th May 2010 seeking an order of the Court pronouncing against the validity of the Will and granting letters of administration of the Estate of Edris Sliston to him.

[11] In his Statement of Claim, the Claimant averred that at the time of the execution of the Will, Edris Silston lacked the mental capacity to execute a testamentary disposition or to give instructions for the same and, further or alternatively, Edris Silston did not know and approve the contents of the Will. The Claimant claimed that, in the premises, the Will was executed in suspicious circumstances and the Claimant is entitled to the relief claimed.

[12] On 15th June 2010, the Defendant filed a Defence and Counterclaim joining issue with the Claimant on his claim and counterclaiming for the Court to pronounce for the force and validity of the Will and to grant letters of administration (with will annexed) to the Defendant.

[13] On 23rd September 2010, the Claimant filed a Reply and Defence to Counterclaim joining issue with the Defendant on her Defence and Counterclaim.

[14] Between 11th October and 4th November 2010, the Defendant filed a list of documents, two witness statements and a pre-trial memorandum pursuant to case management directions given by the Court on 24th September 2009, and between 20th January and 10th February 2010 the Claimant

filed a list of documents, four witness statements and four witness summaries and a pre-trial memorandum pursuant to an order of the Court dated 21st January 2011 extending the time for compliance by the Claimant with the case management directions.

[15] The trial of the case took place on 19th and 20th October 2011; written submissions were filed on behalf of the Defendant on 10th November 2011 (on the date ordered by the Court); written submissions were filed on behalf of the Claimant on 29th November 2011 (19 days after the date ordered by the Court); and judgment was reserved by the Court.

[16] The evidence in this case came from the Claimant and seven other witnesses called by him (although he was only given leave by the Court to call five witnesses) and from the Defendant and one other witness called by her (although she was given leave to call three witnesses).

[17] The Claimant's evidence was given in his witness statement dated 4th February 2011 and in his viva voche evidence given in Court on 19th October 2011.

[18] I shall reproduce in full the thirteen numbered paragraphs of the Claimant's witness statement:

1. I am the husband of Edris Silston, deseased. I know Mr. Ruthlyn Chambers.

2. Edris Silston and I were married on the 6th May 1971. We were together as a couple since 1962. In or about 1983 we moved into what became the matrimonial home at the said Belle View Estate.

3. As my wife became older her mental and physical health gradually deteriorated. I noticed that her memory was not what it used to be. She had difficulty remembering things but things rapidly got worse after September 2007.

4. On or about 26th September 2007 my wife returned home from a trip overseas. Her Niece Ethlyn Parker brought her home. I removed the luggage from the vehicle and brought them inside the house. I immediately realized that they were not the same pieces of luggage which I had checked in upon her departure. I asked Edris about it and she replied that "some man" came into her hotel room and took them away. I found this very unsettling since my wife was usually very careful with her things.

5. That night, after having dinner, she was not able to remove herself from the dinner table. She could not walk. I had to carry her to the bedroom. She was never able to go to work or work from her bedroom on her own since that time.

6. My wife became a shut-in. She no longer went to work or visited her friends and relatives and she no longer went to church.

7. This was a very difficult period as she also began to have hallucinations. She saw people that were not there and she carried on conversations with "spirits".

8. It was very clear to me that my wife was not able to manage her affairs.

9. I have seen the will dated 16th January 2008. It contains references to a significant number of properties and person. I do not think that my wife could have remembered all of those names and properties at that time.

10. The favours Ruthlyn Chambers and her family. This I found to be strange as my wife dealt with her nieces and nephews fairly and never sought to put one about the other. Further, Edris herself had told me that she did not trust Ruthlyn and this was why she did not entrust her with responsibility for money.

11. I am also aware that Dr. Cecil Phillip had prepared a medical report which stated that my wife was not mentally of sound mind. The report, dated 5th September 2008 stated that Edris Silston was suffering from Alzheimer's disease and in all likelihood had been suffering from the same for 18 months.

12. I believe that the will was signed at a time when my wife was not aware of what she was doing.

13. I am asking the Court to declare that will to be invalid.

[19] The Claimant's viva voche evidence came mostly from his cross examination by Counsel for the Defendant.

[20] Under cross examination the Claimant testified that it became clear to him after 26th September 2007 that Mrs. Silston was not able to manage her affairs. He said that he had taken her to the airport about two days before, checked her in and left. He said that when he checked her in he checked in three pieces of luggage and that, upon her return from Miami, he realized that the pieces of luggage she had were not the same three pieces which he had checked in upon her departure. He said that he asked her about the luggage she came back with, that the pieces she came back with were not those that he checked in, and that she did not recognize that the pieces she had were not those that he had checked in. He testified that when he said that Mrs. Silston became a shut in he did not mean that she became bedridden, but that she was no longer going out. In fact, according to his witness statement, he meant that she no longer went to work or visited her friends and she no longer went to church.

[21] The next witness for the Claimant (in fact he was called before the Claimant because of the demands on his time as a medical doctor) was Dr. Cecil Phillip. Dr. Phillip adopted his medical

report on Mrs. Edris Silston dated 5th September 2008 as his evidence in chief. In his report Dr. Phillip stated that he had been acquainted with Edris Silston since his schoolboy days, through contact with her at her business place. He stated that he was asked by the Claimant to visit Mrs. Silston at her home to assess her clinically and that he did so on 30th August 2008. He stated that the Claimant indicated to him that Mrs. Silston had been a shut in for almost a year because of physical and mental concerns; that she has been unable to care for her basic physical needs; and that she had been seeing and hearing things which were not in keeping with reality. Dr. Phillip then recounted various details of his visit with Mrs. Silston, some of which indicated that Mrs. Silston was alert, well cared for and behaving in ways not indicative of any mental impairment, and some of which suggested that Mrs. Silston was forgetful, showing thought deviation and displaying hallucination. He concluded his report by opining that Mrs. Silston had Alzheimer's disease which would have started to affect her more than eighteen months ago; that the disease causes progressive deterioration in the mental status of the affected person; and that Mrs. Silston was then incapable of making any rational decisions about her business, domestic or health related affairs.

[22] Under cross examination by Counsel for the Defendant, Dr. Phillip made the significant concession that he could only conclude from his assessment of Mrs. Silston that, at the time he saw her, her mental status would have been somewhat affected, but he absolutely could not say to what extent it was affected or what her mental condition was in January 2008. He also reasserted that he could only say what her mental condition was at the time that he saw her in August 2008.

[23] Some questions put to Dr. Phillip by the Court and questions put to him by Counsel for the parties as a result of questions by the Court did not take the matter any further.

[24] The third witness for the Claimant was Veronica Pitt. A witness summary was filed on behalf of the Claimant which had attached to it a document signed by Veronica Pitt. In the document, Ms. Pitt stated that she worked as a geriatric caregiver with Mrs. Edris Silston from September 2007 to June 2009; that from the start of her employment Mrs. Silston appeared to be confused very often; that her condition worsened after a few months; that she remembered Deserie Douglas, who was also employed to give geriatric care, asking the Defendant if medical treatment was available for Mrs. Silston's condition because, for the most part, Mrs. Silston received no medication; that Dr. Ramsey was called in and he advised that Mrs. Silston's family doctor should visit on a regular basis; that at sometime Mrs. Silston became so ill that she had to be taken to the Mount St. John Hospital by ambulance; that when she was discharged, they gave her B Complex, Paracetemal and Sanatogen on a regular basis; that Mrs. Silston's condition continued to worsen and sometimes she would shout at them and also claimed to see people and things in the room that no one else saw and would call the names of persons whom she (Ms. Pitt) later learnt were dead relatives and friends; that towards the end Mrs. Silston became afraid of being alone; and that eventually Mrs. Silston was confined to bed and her physical condition go so bad that she had difficulty swallowing; that Mrs. Silston was admitted to Adelin Clinic where she died a month later.

[25] Under cross examination, Ms. Pitt could not say whether it was in 2007, 2008 or 2009 that Mrs. Silston became so ill that she had to be taken to Mount St. John Hospital by ambulance; there was a year typed in the document that she signed, which year was changed and the change initialed 'VP', but she testified that she could not remember if she was making a change to what she indicated there. She also testified that she could not remember why she put VP near the alteration in the document. She testified that the year that was being referred to was 2007, then that she believed it was 2008, having earlier stated that it was supposed to be in 2009.

[26] Under further cross examination Ms. Pitt testified that the Defendant was her boss; that she was the one who arranged for her to come to take care of Mrs. Silston; that she (Ms. Pitt) did not have much contact with the Claimant; that any concerns she had were addressed to the Defendant and not to the Claimant; that the Defendant collected her and took her to work her night shift from 10.00 pm every night. She also testified that she could not remember when it was that Mrs. Silston was confined to bed, but she testified that Mrs. Silston was confined to bed because of her physical condition.

[27] The fourth witness for the Claimant was Desiree Douglas. Like was the case with Veronica Pitt, a witness summary was filed to which was attached a document signed by Ms. Douglas. In the signed document Ms. Douglas stated that she was a geriatric nurse with Mrs. Silston from September 2007 to June 2009; that during the first two months of her employment Mrs. Silston was confused at times and by the third month her condition worsened; that she (Ms. Douglas) enquired of the Defendant if any treatment was available for Mrs. Silston's condition, because no medication was being administered to her; that the Defendant contacted Dr. Ramsey, who advised her to get a family doctor to visit on a regular basis; that a few months later Mrs Silston fell ill and was taken to Mount St. John Medical Centre via ambulance; that Mrs. Silston was treated and discharged; that B Complex, Paracetamal and Sanatogen powder were being administered after discharge from hospital; that Mrs. Silston's condition became worse as she had episodes of shouting, crying, hallucinating and calling names of dead relatives and friends; that Mrs. Silston became very afraid of being alone; that she became bedridden sometime later due to poor circulation and lower extremities became very affected; that Mrs. Silston was admitted at Adiline Clinic where she was hospitalized for one month and died.

[28] Under questioning by Counsel for the Claimant, Ms. Douglas corrected the part of the document signed by her wherein in was stated that during the first two months of her employment Mrs. Silston was confused at times; she testified that the document should have stated some months and not two. Upon further questioning by Counsel she testified that it was probably like ten months after, because she remembered that when she went to work at Mrs. Silston's home Mrs Silston she used to sing and pray together with Mrs. Silston and Mrs. Silston would tell her (Ms. Douglas) her whole life history.

[29] Counsel for the Claimant then applied to the Court for Ms. Douglas to be deemed a hostile witness based on her responses to the questions put to her thus far. With no objection by Counsel for the Defendant, the application was granted.

[30] Counsel for the Claimant then cross examined Ms. Douglas. Ms. Douglas reaffirmed under cross examination by Mr. Kentish what she had said in her previous responses to him. She testified that she does go to the clothing store to see the Defendant but that she has never spoken to the Defendant about this case. She testified that whatever was said in the document signed by her or in the document signed by Veronica Pitt about Mrs. Silston's hallucinations occurred only in the last stages of her life before she went to Adelin Clinic.

[31] Under cross examination by Counsel for the Defendant, Ms. Douglas testified about her experience working at a nursing home where she had to care for patients manifesting confusion and patients with Alzheimer's disease. She testified that the reason why she corrected what was in her signed statement is because she realized that she had made an error when she stated that during the first two months of her employment Mrs. Silston was confused at times. She testified that when she got

the summons to attend court she read over the copy of her statement and realized that the part about Mrs. Silston's confusion in the first two months was incorrect because in the early stages of her employment she and Mrs. Silston talked a lot and Mrs. Silston would giver her (Ms Douglas) her whole life history. She denied that she ever told Ms. Daphne Browne that the Defendant, the lawyer and Ms. Arindell were locked away in the room with Mrs. Silston. She testified that Mrs. Silston became bedridden in her last days, probably in the last two months of her life and that prior to that she was able to move about and to go to the bathroom herself. She testified too that every evening, when the Defendant came to Mrs. Silston's home, she would giver her a report about how Mrs. Silston spent the day.

[32] The fifth witness for the Claimant was Ruth Lawrence. The witness summary filed on her behalf which she adopted as her evidence in chief in the case stated that she was a niece of Mrs. Silston, who was her mother's sister; that Mrs. Silston was devoted to her family; that Mrs. Silson had no children of her own and was very fond of her nieces and nephews; that as long as she knew her Mrs. Silston never shunned any of her relatives and did not favour one over the other; that she worked with Mrs. Silston at her clothing store from 1972 to 1980; that in or about October 2007 she learnt the Mrs. Silston was sick and shut in and she went to visit her at her home on a Sunday afternoon and again on a Sunday afternoon in December 2007; that Mrs. Silston did not recognize her and kept asking what was her (Ms. Lawrence's) name; that she was depressed to see Mrs. Silston in that state and not being able to communicate to her.

[33] Under cross examination, Ms. Lawrence testified that she could not speak on behalf of her other relatives or for Mrs. Silston and therefore she cannot say that Mrs. Silston was devoted to her family or was very fond of her nieces and nephews or never shunned any of her relatives or did not

favour one over the other. She testified that the she thinks that the way she learnt that Mrs. Silston was sick was by her daughter's father telling her so. She testified that she did not have contact with Mrs. Silston on a regular basis, but they had contact with each other from time to time.

[34] The sixth witness for the Claimant was Ethlyn Parker. In her witness statement she stated that she was a niece of Mrs. Silston, who was her father's sister. Her witness statement then repeated verbatim the statements contained in the witness summary filed on behalf of Ms. Lawrence which Ms. Lawrence repudiated as evidence that she was in no position to give. She went on to state in her witness statement that in the last two to three years of Mrs. Silston's life she (Ms. Parker) noticed a gradual decline in her health, she became weaker and her memory was deteriorating. She then related a story about a convention in Washington DC that she was supposed to attend with Mrs, Silston in September 2007 and Mrs. Silston not going to the convention but then meeting Mrs. Silston at the airport in Miami. She testified that she took Mrs. Silston home upon their arrival in Antigua and visited her at home that night whereupon she discovered that Mrs. Silston could not walk. She testified that she noticed Mrs. Silston had been travelling with a new set of luggage and that Mrs. Silston told her that a man, a woman and a child came into her hotel room and her luggage disappeared. She testified that on various occasions when she visited Mrs. Silston afterwards she did not appear to be herself. She then proceeded to recount various things that Mrs. Silston said then conclusded that Mrs. Silston's thoughts were never lucid, that she continued to deteriorate with time and that it was becoming clearer that not only did she not understand different things that would be told to her but also that she could not see well.

[35] Under cross examination Ms.Parker, like Ms. Lawrence before her, conceded that she could not speak to whether Mrs. Silston was fond of her nieces and nephews or whether she shunned any of

her relatives or favoured one over another. She conceded too that she could not say whether or not Mrs. Silston was attentive when the Will was being read to her on 16th January 2008. She conceded too that when she met Mrs. Silston at the airport in Miami she (Mrs. Silston) had already completed her shopping and was on her way back to Antigua. She also said that she was not present when Mrs. Silston checked in to leave Antigua en route to Miami but the way she knew that Mrs. Silston was travelling with a new set of luggage was because Mrs. Silston told her so and told her that she bought the set of luggage which she travelled back with.

[36] The seventh witness for the Claimant was David Carlisle. In his witness statement Mr. Carlisle stated that he is a brother of Mrs. Silston; that they were close and got along well; he knows that she was devoted to her family and that she cared for all of her relatives; that before Mrs. Silston became a shut in during September 2007 the Defendant said to him one afternoon that "auntie head gone" and that he said to the Defendant "I know, I have noticed it for some time now"; that the Defendant said to him, among other things, that she did not know why Mrs. Silston wouldn't stay home; that when Mrs. Silston finally became a shut in he used to go and visit her during the week and on Sunday mornings after church; that that sometimes, while watching TV, she would tell him that people were coming out of the television to shoot her. He concluded that he was not an expert but he knows his sister well and he knows that she was not herself for several years before her death.

[37] The cross examination of Mr. Carlisle did not add to or minus from his witness statement. He did confirm though that the Defendant was the person who was attending to the business and welfare of Mrs. Silston and who would be spoken to on issues concerning Mrs. Silston.

[38] The eighth and final witness for the Claimant was Daphnie Browne. In her witness statement she stated that she was a niece of Mrs. Silston and then made the same statement made in the witness statement and retracted under cross examination of both Ruth Lawrence and Ethlyn Parker about Mrs. Silston's devotion to, fondness of and other feelings and attitudes towards her family members. The remainder of her witness statement narrated her experience living and working with Mrs. Silston for several years. She stated that she learnt the trade whilst working alongside Mrs. Silston and stated that she eventually set up her own clothing store. The remainder of her witness statement narrated various things allegedly done and said by and concerning the Defendant and her own encounters with Mrs. Silston in her latter years, including her view of Mrs. Silston's mental state at that time. She concluded her witness statement with the assertion that

[39] Under cross examination, Ms. Browne, like Ms. Lawrence and Mr. Parker before her, retracted the statements made by in her witness statement about Mrs. Silston's feelings about and attitudes to her family members. Under further cross examination, Ms. Browne testified that Ruth Lawrence worked with Mrs. Silston while she (Ms. Browne) worked there and that they both left around the same time in 1980. She testified that she left Mrs. Silston's employ and ventured out on her own, starting her own business. The remainder of her cross examination was essentially a repeat of much of what is contained in her witness statement.

[40] As previously indicated, there were two witnesses for the defence, the Defendant herself and Mr. Franklyn Clarke, QC who prepared and witnessed the Will.

[41] The Defendant, in her witness statement stated that Mrs. Silston was her aunt (her mother's sister); that her mother left Antigua and migrated to the United Kingdom in 1956, leaving her (the

Defendant) and her four siblings with Mrs. Silston, with whom they lived until they joined their mother in the United Kingdom in 1959; that she lived in England until 1987 when Mrs. Silston invited her to return to Antigua to assist her in managing her various businesses and - because of the very good relationship she had with Mrs. Silston - she decided to accept Mrs. Silston's proposal; that Mrs. Silston provided her and her family with a home and a vehicle and she worked with Mrs. Silston from then; that Mrs. Silston had no children of her own but she had many nieces and nephews with whom she enjoyed very good relations over the years. She recalled Mrs. Silston's eighty-fifth birthday on 17th May 2008, when a party was held for her which was attended by family members and friends of Mrs. Silston (including nieces and nephews who returned to Antigua for the party); that Mrs. Silston thoroughly enjoyed the party and was happy to have so many of her family members and friends present to celebrate her birthday with her; that they sang "the birthday song" for Mrs. Silston, and when they reached the part of the song where they ask how old she was, Mrs. Silston – who was always very secretive about her age – responded by saying that she was old enough to serve the Lord. She stated that, for as long as she could remember, Mrs. Silston suffered from poor circulation in her legs which worsened over the years, resulting in Mrs. Silston having great difficulty in moving around; stated that Mrs. Silston went to Miami to shop for her business in September 2007 and, on her return, she observed that Mrs. Silston was clearly exhausted and her legs were more swollen than usual; that she became concerned because from then Mrs. Silston never went back to her store; that she (the Defendant) arranged to have Dr. Prince Ramsey visit the Defendant, which he did, and he prescribed tablets for Mrs. Silston to take for high blood pressure; that Dr. Prince also recommended that Mrs. Silston should rest and remain at home for as long as necessary, but Dr. Ramsey assured her (the Defendant) that Mrs. Silston was alright and was just suffering from old age; that Dr. Ramsey visited Mrs. Silston again about three to four months after the first visit; that she recognized that

Mrs. Silston could not cope on her own and she arranged to get nurses to take care of Mrs. Silston (a day nurse and a night nurse, with the night nurse having to sleep in Mrs. Silston's bedroom with her). She stated too that Mrs. Silston gave her a power of attorney to her to deal with her affairs and asked her (the Defendant) not to let her down and to run the business as she (Mrs. Sislton) had taught her.

[42] Apart from adopting her witness statement as her evidence in chief, the Defendant gave viva voche evidence in Court commenting on some of the evidence given by witnesses for the Claimant. Of the evidence of Ruth Lawrence, she testified that she was never told that Ms. Lawrence visited Mrs. Silston in October and December 2007; that Ms. Lawrence had not seen Mrs. Silston for years; that it is not correct that Mrs. Silston was shut in 2007. Of the evidence of David Carlisle, the Defendant testified that she never told Mr. Carlisle that Mrs. Silston's head had gone or that Mrs. Silston went in the storeroom for a long time and wouldn't come out. Of the evidence of Ethelyn Parker, the Defendant denied calling Ms. Parker in September 2007 and telling her that Mrs. Silston was not in any condition to travel and that she should not expect to meet her in Miami; she also commented that she saw Mrs. Silston on the day she returned from Miami in September 2007 and it is not correct that Mrs. Silston could not walk at that time. Of the evidence of Daphnie Browne, the Defendant categorically denied the truthfulness of most of it, especially the portions of it materially relevant to the issues for determination in this case.

[43] Under cross examination, the Defendant testified that she is aware that the proceedings in this case concern the mental health of Mrs. Silston but that she did not really speak about the mental health of Mrs. Silston because there was nothing wrong with Mrs. Silston's mind, but in 2009 at the last stage (presumably of her life) Mrs. Silston had Alzheimer's. She testified that she was not

present when Mrs. Silston executed the Will, but she knew her aunt and she knows that she was "in her right mind" when she signed the Will.

[44] The remainder of the cross examination of the Defendant focused on three issues- one was the proceedings in a case heard by Blenman J connected with Mrs. Silston and the parties to this case, the second was the extent of the provision made in the Will for the Defendant, her children and her siblings and the third was on the veracity and/or inveracity of the evidence of the Claimant's witnesses.

[45] On the issue of the case heard by Blenman J, the Defendant was never shown to have contradicted previous testimony given by her so as to cause the Court to view her evidence in this case with suspicion, and the actual findings and conclusions reached by Blenman J in a case in which she had to determine whether a receiver or receivers should be appointed (and. if yes then who) to manage the affairs of Mrs. Silston, because of her mental infirmity as of 29th April 2009, do not in any way constrain or even influence the findings and conclusions of the Court in the present case.

[46] On the issue of the extent of the provision made in the Will for the Defendant, her children and her siblings, the Defendant agreed with Counsel for the Claimant that the children and grandchildren of Pearle Solomon are the major beneficiaries of the Will. Pearle Simon (who predeceased Mrs. Silston) was the mother of the Defendant and the sister of Mrs. Silston.

[47] On the issue of the veracity or inveracity of the Claimant's witnesses, the Defendant - in response to specific questions by Mr. Kentish - testified that portions of the evidence of Ethlyn Parker,

Daphnie Browne, David Carlisle, Veronica Pitt and Ruth Lawrence were untrue. She also testified that Mrs. Silston and her brother, David Carlisle, did not get along well with each other; that Mrs. Silston and her niece, Daphnie Browne, did not get along well; that Mrs. Silston had not seen her niece, Ruth Lawrence, for about eight years before her death. She did testify though that Mrs. Silston got along well with her niece, Ethlyn Parker.

[48] The other witness for the Defendant was Franklyn Clarke, QC. In his witness statement Mr. Clarke stated that he knew Mrs. Silston for over fifty years and worked as her Attorney-at-Law for several years. He stated that he knew the Claimant and met the Defendant in July 2008 when she visited his chambers. He stated that in or about 2nd January 2008 Janet Arrindell visited his chambers and brought instructions from Mrs. Silston to prepare a will; that the instructions were in the form of changes made to a former will; that Ms. Arrindell visited his chambers on two or three other occasions and brought him further instructions; that based on the instructions he prepared a draft of the proposed will and took it to Mrs. Silston's home, along with Ms. Arrindell, and read the draft to Mrs. Silston; that Mrs. Silston confirmed that the draft was in order; that on 14th January 2008 he again went to the home of Mrs. Silston, accompanied by Ms. Arrindell and, while going through the will with Mrs. Silston, she drew his attention to an error in clause 11 of the will where Anthony Chambers was described as her nephew instead of her great nephew; that he then inserted the word "great" before the word "nephew" and the insertion was initialed by him, by Ms. Arrindell and by Mrs. Silston; that he explained that the will in that form would be valid but he would prefer to have it retyped with the necessary correction; that on 16th January 2008 he again returned to Mrs. Silston's home accompanied by Ms. Arrindell, read over the will to her and drew her attention to the correction which had been made; that Mrs. Silston expressed her satisfaction with the will and

signed it in his and Ms. Arrindell's presence. He stated that when Mrs. Silston signed the will on 16th January 2008 she was mentally alert.

[49] Commenting on evidence given by Daphnie Browne, Mr. Clarke testified that the Defendant was never present when he went to see Mrs. Silston.

[50] Under cross examination by Mr. Kentish, Mr. Clarke responded to several questions on procedures, principles and practices concerning the making of wills generally and of wills of older and/or physically incapacitated persons in particular. He also responded to several questions by Mr. Kentish about dispositions made to various beneficiaries under the Will and agreed that the major beneficiaries under the Will are the Defendant, her children and her siblings. The gist of his evidence under cross examination however was the fact that he received the instructions of Mrs. Silston from her fiend, Janet Arrindell, on the basis of which instructions he prepared (first) a draft will for approval by Mrs. Silston, then a will for signature by Mrs. Silston, and then a corrected will (upon the identification by Mrs. Silston of an error in the previous will); that the corrected will was read over by him to Mrs. Silston, which she expressed her satisfaction with and signed in his and Ms. Arrindell's presence and that Mrs. Silston was mentally alert at the time when she confirmed the instructions for, pointed out the correction to and executed the corrected will.

[51] This concluded the evidence in this case and, by agreement of Counsel on both sides, written submissions (with authorities) shall be filed and exchanged by the parties on or before 10th November 2011 and costs were set in the sum of $15,000 to be paid by the Estate of Edris Silston to the party in whose favour judgment is given.

[52] The submissions on behalf of the Defendant were filed by the due date of 10th November 2011, while the submissions on behalf of the Claimant were filed nearly three weeks later on 29th November 2011.

[53] In their written submissions on behalf of the Claimant, Counsel submitted that there are two principal issues for consideration, firstly, whether Mrs. Silston had the requisite mental capacity to execute the Will and, secondly, did she know and approve the terms of the Will. He submitted too that there was a preliminary issue for consideration by the Court as to whether the Will was prepared and executed under circumstances which raise the suspicion of the Court, in which case it ought not to be pronounced for unless the party propounding it adduces evidence which removes the suspicion and satisfies the Court that Mrs. Silston knew and approved of the contents of the Will. These are the same issues offered by the Claimant for determination by the Court in the pre-trial memorandum filed on his behalf on 10th February 2011.

[54] No pre-trial memorandum was filed on behalf of the Defendant, nor did Counsel for the Defendant - in the closing submissions filed on behalf of the Defendant – submit any alternative or additional issues for determination by the Court.

[55] The Court will accordingly proceed to determine the case on the basis of the questions posed by Counsel for the Defendant, which the Court considers are indeed the appropriate issues for its determination in this case.

[56] Before answering the questions posed, I propose to first make some comments on the evidence of the ten witnesses who gave evidence in this case.

[57] The first witness was Dr. Cecil Phillip. Dr. Phillip's evidence, as contained in his medical report which was treated as his evidence in chief and in his oral testimony under cross examination, amounted to the impressions formed by him on a single visit to Mrs. Silston's home in August 2008. The impressions he formed of Mrs. Silston appeared to be that she was well cared for in pleasing, comfortable and hygienic accommodation, that she was alert and pleasant, upbeat and funny, smiling genuinely and in a talkative mood. He also appeared to simultaneously form the impression, probably induced in part by the information given to him by Mrs. Silston's husband (the Claimant) who engaged him and who accompanied him on the visit to Mrs. Silston, that Mrs. Silston was forgetful, showed thought deviation and displayed hallucination. He opined, in his report, that Mrs. Silston had Alzheimer's disease, which would have started to affect her more than eighteen months ago, and that Mrs. Silston was not capable of making ant rational decisions about her business, domestic or health related affairs.

[58] I was unimpressed by the conclusiveness and retroactivity of Dr. Phillip's findings as a general practitioner paying a first time visit to someone whom he had had no personal knowledge of. I was also unconvinced about his conclusions against the background of his own observations, including that Mrs. Silston recognized him as a customer of hers (which he said he had been) and that when he told her that he was a medical doctor, she then informed him about a previous visit to her by Dr. Ramsey (which the Claimant acknowledged had taken place). I formed the view that, apart from his evidence of episodes of hallucination, the remainder of his observations was consistent with the behaviour of a physically ailing octogenarian who was mentally competent. It was noteworthy that he stated in his report and in his oral testimony that when he visited and spoke to Mrs. Silston the Claimant and two female helpers were present and they were able to substantiate or deny what Mrs. Silston said, but both of Mrs. Silston's care givers (who were the Claimant's witnesses)

testified that they were not present when Dr. Phillip was speaking to Mrs. Silston, which raises a question as to who the Claimant presented to Dr. Phillip as Mrs. Silston's helpers to substantiate or deny (along with him) what Mrs. Silston said to Dr. Phillip. It was also noteworthy that, under cross examination, Dr. Phillip largely recoiled from the conclusiveness and retroactivity of his conclusions and ended up only with a conclusion that at the time he saw Mrs. Silston her mental status would have been somewhat affected, but that he absolutely could not say to what extent her mental status was affected or what her mental condition was in January 2008.

[59] The second witness was the Claimant, whose evidence left one with the impression that he was very distant from his wife, although apparently sharing a residence with her. His evidence that as Mrs. Silston became older her mental and physical capacity gradually deteriorated, that he noticed that her memory was not what it used to be and that she had difficulty remembering things, was either unremarkable (to borrow a phrase frequently used by medical doctors) as being exactly what is to be expected of a woman in her eighties, or alarming in that, despite having noticed this, he dropped her on the airport, checked in her luggage and left her at the airport for her to take a flight on her own to Puerto Rico, then another to Miami, then go shopping in Miami and return to Antigua two days afterwards by the same route in the other direction. Further evidence of his distance from his wife came also from the witness statements and testimony of virtually all of the witnesses, including his witnesses, which clearly bring out the fact that any issue concerning Mrs. Silston was addressed to the Defendant and not to the Claimant, although he was Mrs. Silston's husband and shared the matrimonial home with her. Despite his assertions about the deteriorating health of his wife, the only evidence of him doing anything relative to her health is his brining in Dr. Phillip to produce a report which he used to make application to the Court to be appointed to take control of Mrs. Silston's affairs, not her health, for which he would not have required any court appointment,

but her finances. I do not believe his evidence of having called Dr. Ramsey to visit Mrs. Silston on 26th September 2007; I accept the evidence of the Defendant that she was the one who arranged the visit, which is consistent with the evidence of everyone that all such matters were handled by her. I attach no weight to the Claimant's evidence about Mrs. Silston's mental capacity.

[60] The next witness was Veronica Pitt. I found her evidence to be unreliable and unhelpful. She did not appear to have authored or owned the document signed by her, the contents of which were treated as her evidence in chief. The signed document contained very specific details, the specificity of which was inconsonant with her evidence under cross examination. Then there was an apparent penned-in alteration made to her written and signed statement, which alteration appeared to have been initialed "VP" but, under cross examination, she testified that she could not remember why she put "VP" there. Then she said that the year which was supposed to have been there (where the correction was made) was 2009, then 2007, then 2008. I attach little or no weight to her evidence.

[61] The next witness was Deserie Douglas. Her evidence too was suspect, but appeared to be more credible than the evidence of Ms. Pitt. She seemed to be much clearer and more confident about what she was saying and showed more ownership of her written statement. She also did not appear to be ruffled by the cross examination of her, even after being deemed a hostile witness and cross examined by Counsel for the Claimant, whose witness she was.

[62] The next witness was Ruth Lawrence. Her evidence was of very little value to the Court or to the Claimant. Having worked at Mrs. Silston's clothing store until 1980, she appeared to have little contact with her after that and had to be told by someone unrelated to Mrs. Silston that Mrs. Silston

was unwell. Her evidence about Mrs. Silston not recognizing her and asking her what was her name, and of her not being able to communicate with Mrs. Silston in 2007, was not consistent with the evidence of any of the other witnesses in the case. In fact, the medical doctor who opined that Mrs. Silston had Alzheimer's disease, and which he opined would have started to affect her more than eighteen months previously, gave evidence of Mrs. Silston recognizing him in August 2008 as a customer of her store and of him conversing and otherwise communicating with her during his visit to her in August 2008. Ms. Lawrence's evidence of her aunt not recognizing her and not knowing her name and of her own inability to communicate with her aunt in October and December 2007 is not very credible therefore and I attach no weight to it.

[63] The next witness was Ethlyn Parker. Her evidence, though quite detailed, was not very helpful to the Court in making the determinations which it is required to make in this case. That Mrs. Silston experienced a gradual decline in her health in the last two to three years of her life was to be expected, especially having regard to the fact that she would have been between 83 and 86 years old during that period; so too that she became weaker and her memory was deteriorating. That Mrs. Silston bought a new set of luggage in Miami can hardly be described as remarkable, though the evidence of Mrs. Silston's explanation for the purchase might be significant, but quite significantly not apparently pointed out to the Defendant, whom everyone agreed was responsible for the care of Mrs. Silston. That on various visits to Mrs. Silston after September 2007 she manifested degrees of hallucination would not in the circumstances be very significant, particularly having regard to the fact that no dates were given as to when between September 2007 and July 2009 these visits or the manifestations of hallucination occurred.

[64] Neither the Claimant nor the Court was very much assisted by the evidence of Ms. Parker.

[65] The next witness was Mrs. Silston's brother, David Carlisle. I did not find his evidence to be very credible. That he had been told and had known for some time before September 2007 that his sister - whom he claimed he was very close to and got along well with - had lost her mind ("aunty head gone") and was nonetheless travelling to Miami on her own to shop and which, moreover, he said he knew of but was not concerned about, cannot be taken very seriously. His evidence under cross examination that he thinks Mrs. Silston became a shut-in eighteen months before she died was not only inconsistent with the statement in his witness statement that she became a shut-in during September 2007, but also, quite remarkably, coincided exactly with the month that Mrs. Silston made the Will. It would appear that, for reasons best known to him, Mr. Carlisle set out to convince the Court that Mrs. Silston was not capable of executing a will in January 2008. His evidence did not however achieve the objective which he appeared to have set out to do.

[66] The next witness was Mrs. Silston's niece, Daphnie Browne. Her witness statement was very detailed, but contained mostly averments about conversations between her and the Defendant concerning Mrs. Silston and other averments about the relationship between Mrs. Silston and the Defendant. All of this evidence was denied by the Defendant in her testimony in Court and I prefer the evidence of the Defendant who was brought down from the UK by Mrs. Silston to assist her in managing her affairs after Ms. Browne and other nieces of Mrs. Silston left her employ to establish their own businesses. In fact, it was Ms. Browne's evidence that when she worked with Mrs. Silston she was trusted by Mrs. Silston to go shopping for her in New York, Miami, Puerto Rico and St. Marten; she was the one who took care of matters that needed to be dealt with at Customs and at the bank; and she was the one left in charge when Mrs. Silston had to travel; but she left in 1980 to set up her own clothing store. The Defendant on the other hand migrated to Antigua with her family to assist Mrs. Silston in managing her businesses and continued to assist in and eventually

manage on her own all of Mrs. Silston's affairs until Mrs. Silston died twenty two years later in 2009.

[67] I come now to the evidence of the Defendant, Ruthlyn Chambers, another of Mrs. Silston's nieces. Her evidence revealed that for two decades she was Mrs. Silston's assistant in all of her business affairs, having been brought down from England by Mrs. Silston to do so. Then for the last two years of Mrs. Silston's life she solely managed Mrs. Silston's affairs, including all of her domestic arrangements, like employing persons to nurse her, feed her, sleep with her, and generally to care for Mrs. Silston in her last days when Mrs. Silston was physically unable to take care of herself. And she did not just employ those persons and leave the care of Mrs. Silston to them, the evidence shows that she required and received daily reports from them on Mrs. Silston's condition and on the care being administered to her, that she left her home and family every night to pick up the night caretaker at her home and take her to Mrs. Silston's home at ten in the night, she arranged doctors' visits for Mrs. Silston and responded to all family members on every issue concerning Mrs. Silston, although she lived at her own home with her husband and children and although Mrs. Silston's husband (the Claimant) supposedly lived with Mrs. Silston.

[68] I formed a very favourable view of the Defendant, resulting from her obvious devotion to her aging and ailing aunt. Whether that devotion was the offspring of the love and affection which she had for the aunt who mothered her and her siblings when her own mother was separated from them for four years and who provided employment for her and accommodation and transportation for her and for her husband and children for twenty two years, or whether her devotion was born from her awareness of the bounty of her aunt and her expectation of being generously provided for from that bounty, the fact is that she was there with and for aunt for nearly a quarter of a century.

[69] The final witness in the case was Franklyn Clarke, QC. His evidence was simple and straightforward. He had known Mrs. Silston for over fifty years; he had worked as her Attorney-at-Law for several years; in January 2008 Mrs. Silston's friend, Janet Arrindell, visited him at his chambers and gave him the instructions of Mrs. Silston to prepare a new will for her by making identified changes to a will that she had previously made; he prepared a draft will (based on the instructions), took it to Mrs. Silston who confirmed the correctness of the instructions on the basis of which the draft will was prepared; he then prepared a will from the draft and took it to Mrs. Silston for execution. Upon reading the will to Mrs. Silston, she pointed out an error in the designation of one of the named beneficiaries. although the error was corrected and initialed and the will was signed by Mrs. Silston in his and Ms. Arrindell's presence, he still did the will over and again returned to Mrs. Silston with the corrected will for its execution. He then read over the corrected will to Mrs. Silston and pointed out the correction to her. Mrs. Silston thereupon expressed her satisfaction with the will which he read to her and, in his and Ms. Arridell's presence, Mrs. Silston signed the will. At the time that Mrs. Silston executed the Will, she was mentally alert. Under cross examination, he testified that being mentally alert means the same thing as having a sound and disposing mind and it means too that the person knows what he or she is doing.

[70] I have no difficulty with the evidence of Mr. Clarke and no reason to doubt its accuracy and veracity. I also accept his evidence that there was no necessity to have a doctor present when the Will was being executed or to have gotten details of the balances on Mrs. Silston's bank accounts before preparing her will. I accept also his evidence that the Defendant was not present on any of the three occasions when he visited Mrs. Silston for confirmation of her instructions for and execution of her will. I found Mr. Clarke to be a witness of truth and I do not accept that he was in

any way hindered from preparing or participating in the execution of the Will because of a hearing impairment which he said he has had for some years.

[71] The Court will now ask and answer the question as to whether the circumstances in which the Will was prepared and executed arouse the suspicion of the Court.

[72] There is a long line of cases stretching back to the case of **Barry v Butlin**[1] in 1838 which address the issue of suspicious circumstances which ought to excite a court called upon to pronounce in favour of a will. These cases were very helpfully reviewed by Wooding CJ in the Court of Appeal of Trinidad and Tobago in the case of **Moonan v Moonan**[2] decided in 1963.

[73] The case of **Barry v Butlin**[1] was one in which the attorney who prepared the will took no less than a fourth of the testator's estate and the other legatees took the whole of the remainder, with no provision made for the testator's own family. In that case Parke B, in delivering a judgment in the Privy Council, said:

> "The rules of law according to which cases of this nature are to be decided do not admit of any dispute, so far as they are necessary to the determination of the present appeal .... These rules are two: the first that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator. The second is that if a party writes or prepares a will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court, and calls upon it to be vigilant and jealous in examining the evidence in

[1] (1838), 23 Digest (Repl) 131, 1357
[2] (1936) 7 WIR 420

support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased."

[74] In the case of **Fulton v Andrew**[3] in 1875, Lord Hatherley, in delivering a judgment in the House of Lords, restated the rule as follows:

"There is one rule which has always been laid down by the courts having to deal with wills, and that is that a person who is instrumental in the framing of a will, as these two persons undoubtedly were, and who obtains a bounty by that will, is placed in a different position from other ordinary legatees who are not called upon to substantiate the truth and honesty of the transaction as regards their legacies. It is enough in their case that the will was read over to the testator and that he was of sound mind and memory and capable of comprehending it. But there is a further onus upon those who take for their own benefit after having been instrumental in preparing or obtaining a will. They have thrown upon them the onus of showing the righteousness of the transaction."

[75] In the case of **Tyrrel v Painton**[4] in 1894, Lindley LJ, said in the Court of Appeal in England:

"The rule **in Barry v Butlin**[1] ... **Fulton v Andrew**[3] ... and **Brown v Fisher**[5] ... is not, in my opinion, confined to the single case in which a will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the court, and whenever such circumstances exist, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to

[3] (1875), LR 7 HL 488
[4] [1894] P 151
[5] (1890), 63 LT 465

prove affirmatively that the testator knew and approved the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the will."

[76] In the same case of **Tyrrel v Painton**[4], the breadth of Lindley LJ's statement of the principle was narrowed by Davey LJ when he gave his judgment. He said:

"It must not be supposed that the principle in **Barry v Butlin**[1] ... is confined to cases where a person who prepares the will is the person who takes the benefit under it – that is one state of things which raises a suspicion; but the principle is that, wherever a will is prepared under circumstances which raise a well-grounded suspicion that it does not express the mind of the testator, the court ought not to pronounce in favour of it unless that suspicion is removed."

[77] In the case of **Davis v Mayhew**[6] in 1927, Lord Hanworth MR said in the Court of Appeal in England:

"the wide definition of suspicion stated by Lindley LJ, in **Tyrell v Painton**[4] ... that it 'extends to all cases in which circumstances exist which excite the suspicion of the court' appears to have been used in reference to the preparation of the will, its intrinsic terms, and the circumstances surrounding its preparation and execution, and Davey LJ, seems to have the same matters in mind."

[78] In the unreported case of **Straker v Luke**[7] - in deciding an appeal from the Supreme Court of Trinidad and Tobago in 1946 in a case in which a testatrix made three different wills in a short

[6] [1927] P 264
[7] (1946), WICA (unreported)

space of time and with the instructions for and execution of the last of them being done in the presence of the principal beneficiary or beneficiaries shortly after the testatrix was discharged from the hospital and while she was still in bed - the then West Indies Court of Appeal stated in its judgment that:

> "It seems to us that upon a consideration of the substantial changes of testamentary dispositions made within a very short period and bearing in mind that these wills were changed when the testatrix was in a very poor state of health and in close contact with the respondent, the fact that the respondent was to derive increased benefits under these wills and had been made sole executrix, that her brother and sister also were to benefit, that the sister of the testatrix and a faithful servant were excluded from a share in her bounty, and that the appellant with whom she was not at variance and whom she desired to benefit under her will of 13 October, is to receive a much smaller legacy, would give rise to suspicions requiring explanation and if not dissipated might lead to the belief that the sudden changes were not the result of the free volition of the testatrix."

[79] In the case of **Re R**[8]. in 1950, Willmer J. undertook a review of the cases and concluded from his review that the circumstances which can properly excite the suspicion of the court so as to satisfy the second rule in **Barry v Butlin**[1], and the only such circumstances are such as attend or are relevant to the preparation and execution of the will itself.

[80] In the case of **Alvarez v Chandler**[9]in 1962, Wooding C.J. said in the Court of Appeal of Trinidad and Tobago, in a case involving a will made by a woman at a time when she was well over one hundred years old:

[8] [1950] 2 ALL ER 117
[9] (1962), 5 WIR 226

"The onus which lies in every case upon a party propounding a will is one requiring him to 'satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator' ... This is generally recognized as a fundamental rule of probate law. It is quite true that, in the absence of evidence to the contrary, a will which is shown to have been executed and attested in the manner prescribed by law, and which appears to be rational on the face of it, is presumed to be that of a person of competent understanding ... but, once there is evidence before the court which casts doubt upon the validity of that presumption in any case, its conscience cannot, or should not, be satisfied without some affirmative proof."

[81] Then in **Moonan v Moonan**[2] the Court of Appeal of Trinidad and Tobago upheld a judge's order refusing probate of a will because the preparation and execution of it were attended by circumstances of suspicion which its propounders had failed to remove.

[82] The circumstances attending the preparation and execution of the will in **Moonan v Moonan**[2] were that the will was made less than twenty-four hours after the testator had undergone a serious operation. He had received some sedation which, it was thought by the surgeons, would debilitate him mentally. The genesis of the will occurred while two of the four beneficiaries were alone with the testator in the hospital where the operation had been performed and one of the two (who was named as the sole executor of the will) called the solicitor to the testator's bedside. No disposition or even mention was made of the testator's wife and daughter who had always lived with him on terms of the closest amity. The solicitor who prepared the will had never acted as solicitor for the testator in any other respect and was unaware either of the extent of the testator's estate or of the persons who might be expected to have a claim on his bounty. He was given no information and made no inquiry concerning any of these matters. There was also the evidence of a medical

doctor that he spoke on several occasions to the testator who told him that for the first few days after the operation in the hospital he could not remember anything of what took place. Of significance too is that fact that the testator died nineteen years after the making of the will, the existence of which had never surfaced during those nineteen years; that the testator's wife and daughter never became aware of the existence of the will until after they had given instructions for the filing of letters of administration in the estate of the testator (on the assumption of course that he had died intestate) and; that one of the four beneficiaries under the will had died fifteen years before the testator and another (who was also named as the sole executor of the will) died two years before the testator and no changes were made to the will as a result of these beneficiaries preceding the testator, in one case by fifteen years.

[83] These facts, according to Wooding CJ, "bear directly on what Lord Hanworth referred to as 'the preparation of the will, its intrinsic terms, and the circumstances surrounding its preparation and execution.' Cumulatively, they add up to circumstances which should, and indeed did, excite suspicion and which, therefore, called upon the court in the words of Parke B 'to be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased'."

[84] It would appear that the doctrine of suspicious circumstances attending the preparation and execution of a will was born in the Privy Council in 1838, continued to grow and develop in England over the next century, travelled to the Caribbean in 1946 and continued its growth and development both in the United Kingdom and in the Caribbean, and came of age in the Caribbean in the Court of Appeal of Trinidad and Tobago in 1963.

[85] The doctrine started off as being limited to the circumstance of an attorney preparing a will under which he got a significant benefit, then progressed to include any person involved in the preparation of a will under which he got a significant benefit, and further progressed to include any circumstance in which the preparation of the will, its intrinsic terms and the circumstances surrounding its preparation and execution should and does excite the suspicion of the court.

[86] On the facts of the present case, the attorney who prepared the Will got no benefit whatsoever under the Will and there is no evidence of any involvement whatsoever of the Defendant or any of the other beneficiaries under the Will in its preparation and execution. The suggestion in the witness statement of Daphnie Browne that the Defendant may at some time have been in a room with Mrs. Silston, Ms. Arrindell and the lawyer who prepared the Will whilst something was being done in relation to the Will, never went beyond a suggestion and, in any event, the Court accepts without reservation the evidence of Mr. Franklyn Clarke QC that on all three occasions on which he was at the home of Mrs. Silston dealing with the Will, the only persons present were Mrs. Silston, Ms. Arrindell and him.

[87] None of the specific scenarios which gave birth to this doctrine arise in the present case and resort must therefore be had to the broader statement of the doctrine, the broadest form of which came from the judgment of Lindley L.J. in **Tyrrel v Painton**[4], where he stated that the doctrine (or the rule as he referred to it) "extends to all cases in which circumstances exist which excite the suspicion of the court". This broad statement of the doctrine must however be placed in the context of Wooding C.J.'s statement in **Moonan v Moonan**[2] that the facts must bear directly upon what Lord Hanworth referred to as "the preparation of the will, its intrinsic terms, and the circumstances surrounding its preparation and execution."

[88] The question then becomes - is the present case one in which circumstances exist, bearing directly upon "the preparation of the Will, its intrinsic terms, and the circumstances surrounding its preparation and execution," which excite the suspicion of this Court and which therefore calls upon the Court (in the words quoted from Parke B in **Barry v Butlin**[1]) "to be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased?"

[89] The factors on the basis of which the Claimant asks the Court to find suspicious circumstances in this case are the following:

1. The undisputed advanced age and infirmity of the deceased;
2. The doubtful mental capacity of the deceased;
3. The fact that the instructions for preparation of the Will did not come directly from the testator to the solicitor;
4. The fact that there is no evidence of any written instructions for the Will;
5. The fact that the Will principally favours the Defendant (who is not credible) and her family (most of whom reside overseas);
6. The absence of any medical examination of the deceased contemporaneously with the execution of the Will.

[90] It is to be noted that these six factors enumerated in the Claimant's closing submissions represent an expansion of the original four enumerated in the Claimant's pre-trial memorandum. Be that as it may, the Court will address all six of the factors enumerated in the Claimant's closing submissions.

[91] In terms of the first factor, it was not disputed that Mrs. Silston was 84 years old at the date of execution of the Will in January 2008 and that after her last trip overseas on 26th September 2007 she - according to the Claimant - "was never able to go to work or walk from her bedroom on her own since that time" or - according to the Defendant - had "great difficulty moving around". Of note is the fact that Ms. Douglas in her signed statement, stated that Mrs. Silston became bedridden some time later (after her condition had worsened and she was hospitalized at Mount St. John Medical Centre). She testified that this was in Mrs. Silston's last few days, maybe her last two months she added, and that prior to that Mrs. Silston was able to move about and go to the bathroom on her own. It would therefore be correct to speak of "the undisputed advanced age" of Mrs. Silston, but only of her undisputed physical constrains by the time that the Will was executed.

[92] In terms of the second factor, the issue of the doubtful mental capacity of the deceased is very much disputed. The Claimant and most of his witnesses gave evidence of some element of Mrs. Silston's impaired mental capacity commencing at various times before, from or after September 2007. Their evidence of Mrs. Silston's impaired mental capacity was based primarily on the allegations of her hearing or seeing things which were not real.

[93] The Defendant, on the other hand, gave evidence of Mrs. Silston's mental alertness and awareness at and after January 2008. In her witness statement filed on 22nd October 2010, well over three months before the filing of witness statements by the Claimant or any of his witnesses, the Defendant stated that on the occasion of Mrs. Silston's 85th birthday on 17th May 2008, a birthday party was held for her at her home, which was attended by her family members and many of her close friends; that Mrs. Silston thoroughly enjoyed herself at the party and was happy to see so many of her family members and friends present to celebrate with her; that "the birthday song"

was sung for Mrs. Silston and, when the line was sang which asked how old are you now, Mrs. Silston (who was always very secretive about her age) responded - "I am old enough to serve the Lord." There is also evidence that Mrs. Silston executed a power of attorney in October 2007, which fell to be considered by Blenman, J. in the High Court and the execution of which the learned judge could find no fault with. There is the evidence too of Deserie Douglas to the effect that she took up employment as a geriatric caregiver to Mrs. Silston in September 2007 (some time after Mrs. Silston returned from Miami on 26th September 2007) and that Mrs. Silston used to pray and sing with her, that they talked to each other a lot, and Mrs. Silston told her (Ms. Douglas) her whole life history, and that it was not until about ten months or so after she started to work as a caregiver to Mrs. Silston that Mrs. Silston's condition worsened and she started to get confused at times.

[94] Of course, there is the evidence of Franklyn Clarke QC, which conveyed that Mrs. Silston was a mentally alert person, who was sufficiently attentive and retentive not only to give instructions for the preparation of her will, but also to correct errors made in the text of the will, to have it read to her and for her to express her satisfaction with it and then sign it.

[95] The Defendant neither admitted nor denied that Mrs. Silston had episodes of hallucination in her later years, and some of the Claimant's witnesses were not able to put a time to their claims of witnessing these episodes, whether, that is, it was before or after January 2008 when the Will was executed. In any event, episodes of hallucination experienced by a person of advancing age and declining health, which episodes are manifested by the person seeing or hearing things which others do not see or hear, do not mean that the person is impaired in his or her cognitive function

or intellectual capacity, but only that the person may have a perceptual impairment which may not affect his or her cognition and intellect.

[96] In the present case, the fact that a witness of truth, whose evidence the Court unreservedly accepts, has given evidence of obvious cognitive and intellectual capacity of Mrs. Silston at the time that the Will was executed, suffices to keep the suspicions of the Court unaroused as to whether the Will expressed the mind of Mrs. Silston.

[97] The evidence of Mr. Clarke relative to the cognition and intellect of Mrs. Silston as of January 2008 was corroborated by the undisputed evidence of the Defendant of the display of cognition and intellect by Mrs. Silston up to the time of the celebration of her 85th birthday in May 2008.

[98] In terms of the third factor, the fact that the instructions for preparation of the Will did not come directly from Mrs. Silston to the solicitor is irrelevant when regard is had to the fact that, although Mrs. Silston's instructions for preparation of the Will were conveyed to Mr. Clarke by her close friend and intended executor, Ms. Janet Arrindell, the instructions were confirmed by Mrs. Silston before Mr. Clarke proceeded to prepare the Will for execution by Mrs. Silston. This is not a circumstance which, either by itself or in conjunction with any other factor, could excite or arouse the suspicion of the Court.

[99] In terms of the fourth factor, there is evidence of written instructions for the Will coming from Ms. Arrindell and committed to writing by the attorney who prepared the Will and read to Mrs. Silston, who confirmed the instructions. The fact that these written instructions were not produced to the

Court by the Defendant does not take away from the fact that there was evidence of written instructions.

[100] In terms of the fifth factor, the fact that Mrs. Silston would make a will in 2008 principally favouring the Defendant and her family ought never to arouse the suspicion of anyone when regard is had to the fact that the Defendant responded to Mrs. Silston's request to leave her home in England and to transplant herself and her family to Antigua to assist Mrs. Silston in managing her affairs, and remained with Mrs. Silston for the twenty-one years preceding the making of her will, never abandoning her to set up business on her own as had previously been done by her cousins, and attending to Mrs. Silston's care and well being when Mrs. Silston was not able to do so herself. This is evidenced not only by the Defendant's own evidence, but by the fact that all of the Claimant's witnesses appeared to agree on one thing, that is, that the Defendant was the person who was called by everyone to attend to anything to do with Mrs. Silston's health and care. No one ever called Mrs. Silston's husband, who supposedly lived in the matrimonial home with Mrs. Silston up to the time of her death. Mrs. Silston's caregivers gave daily reports to the Defendant on how Mrs. Silston spent her day or night. A glaring example of the Defendant's devotion and commitment to Mrs. Silston emerged from the evidence of the Claimant's witness, Veronica Pitt, who testified that the Defendant would come to meet her every night to take her to Mrs. Silston's home for 10 pm to provide nursing care to Mrs. Silston. Considering that the Defendant had her own home and family that she would have to leave every night to ensure that Mrs. Silston was being well cared for is an eloquent statement of devotion and commitment by one person to another.

[101] It may well be that the Defendant did all of these things so as to be more favoured by Mrs. Silston in her testamentary dispositions; but the fact is that she did these things and remained with Mrs. Silston for over two decades and Mrs. Silston did evidently favour her more in her testamentary dispositions. The standardized statement by the Claimant's witnesses that Mrs. Silston did not favour any one niece or family member over another is not credible, considering that there may have been some of her nieces and other family members who lived right here in Antigua but who did not bother to even come to see her for several years, that there were others who visited her sometimes, and there was the Defendant who appeared to have been devoted and committed to her care and well being.

[102] Mrs. Silston's favouring of the Defendant and her immediate family in her testamentary dispositions could not, in the circumstances, arouse anyone's suspicion.

[103] Of course, it is not to be overlooked that Mrs. Silston made substantial bequests to the Claimant, including a hotel, a bank account with an undisclosed amount of money on it and a ten-year interest in the property in which she lived; she made substantial bequests as well to other of her relatives, including all of those who served as witnesses for the Claimant; and she also made bequests to employees, including her caregivers, and to her church. In fact, no evidence was given of anyone being left out in the Will whom it might have been expected to have been a beneficiary of Mrs. Silston's bounty.

[104] The final factor submitted by Counsel for the Claimant on the basis of which the Court should find suspicious circumstances in this case is the absence of any medical examination of Mrs. Silston contemporaneously with the execution of the Will. Although some textbook writers suggest that

when taking instructions for the preparation of a will from an elderly and/or seriously ill testator, the person preparing the will should have the testator examined by a medical doctor or should have the will witnessed or approved by a medical practitioner, there is no known statutory requirement or judicial decision to this effect and it is certainly not a known practice in the jurisdiction of the Eastern Caribbean Supreme Court.

[105] This Court considers that, on the evidence in this case, none of the six factors on the basis of which it was called upon to find suspicious circumstances, either individually or collectively, arouses the suspicion of this Court so as to require the Defendant to remove any suspicion and satisfy the Court that the Will expresses the true will of Mrs. Silston. I will go further though to say that, if there were any circumstances which had aroused my suspicion, I would have found that my suspicion was dissipated by the evidence adduced by the Defendant, coming both from her witness statement and oral testimony and from the witness statement and oral testimony of her witness, Mr. Franklyn Clarke QC, and that I was satisfied that Mrs. Silston knew and approved the contents of the Will.

[106] Having considered and determined what Counsel for the Claimant described as the preliminary issues for consideration by the Court, I come now to address what Counsel submitted are the two principal issues for consideration by the Court, namely, whether Mrs. Silston had the requisite mental capacity to execute the Will and whether Mrs. Silston knew and approved the terms of the Will.

[107] The authorities establish that the first requirement for satisfying the Court on these issues is to prove due execution of the Will.

[108] Section 7 of **the Wills Act**, Cap. 473 of the Laws of Antigua and Barbuda Revised Edition 1992, provides as follows:

> "No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot, or end, thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

[109] The Will of Mrs. Silston, which is in writing and which is in evidence before this Court, shows and states that it was executed on 16th January 2008, having been signed on that date by Mrs. Silston at the foot or end of it in the presence of two witnesses, both present at the same time and both subscribing their names to the Will as witnesses thereto. The due execution of the Will was also affirmed in evidence by Mr. Franklyn Clarke QC who prepared the Will and was a witness to its signature by Mrs. Silston.

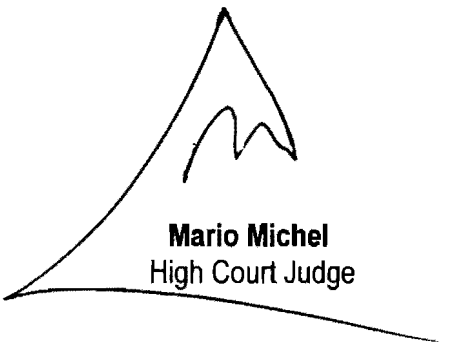
[110] Mr. Clarke also affirmed in his evidence before the Court that at the time of the execution of the Will, Mrs. Silston was mentally alert, which he testified that he understood to mean that she had a sound and disposing mind and that she knew what she was doing. His evidence of Mrs. Silston having confirmed to him her instructions for the preparation of the Will when he read to her a draft will containing these instructions, of her having manifested mental capacity by, among other things, correcting an error made in the description of one of the beneficiaries in the text of the Will, and of her having expressed her satisfaction with the terms of the Will when the Will was read to her prior to her affixing her signature to it, all go towards satisfying the Court that at the time of the execution

of the Will, Mrs. Silston had the requisite mental capacity to do so and that she knew and approved of the terms of the Will.

[111] The Court accordingly finds that the present case is not one in which circumstances exist, bearing directly upon the preparation of the Will, its intrinsic terms and the circumstances surrounding its preparation and execution, which excite or arouse the suspicion of the Court; that if its suspicion had been excited or aroused, that suspicion would have been removed and it would be judicially satisfied that the Will does express the true will of Mrs. Silston and; that at the time of the execution of the Will by Mrs. Silston on 16th January 2008, Mrs. Silston had the requisite mental capacity to execute a will and that she knew and approved of the terms of the Will.

[112] The Court therefore makes the following orders:

1. The Claimant's case is dismissed.
2. The Court pronounces for the force and validity of the Will of Mrs. Edris Silston dated 16th January 2008.
3. Letters of Administration (with will annexed) be granted to the Defendant.
4. Costs to the Defendant in the sum of $15,000 to be borne by the Estate of Edris Silston.



Mario Michel
High Court Judge