

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS No. 11/ 2014**

**[2018]SCSC**

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**LOUIS PADAYACHY**

Plaintiff

versus

**GARY BARBIER**

Defendant

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Heard: 30<sup>th</sup> November 2015; 4<sup>th</sup> December 2015; 1<sup>st</sup> April 2016; 26<sup>th</sup> April 2016; 29<sup>th</sup>  
October 2016; 28<sup>th</sup> November 2016; 3<sup>rd</sup> February 2017; 17<sup>th</sup> July 2017; 3<sup>rd</sup>  
2017 and 6<sup>th</sup> December 2017.

Counsel: Mr. S. Rouillon for the Plaintiff  
Mr. Gabriel for the Defendant

Delivered: 17<sup>th</sup> day of May 2018

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**JUDGMENT**

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**S. ANDRE J**

- [1] This Judgment arises out of a Plaintiff filed on the 3<sup>rd</sup> February 2012 by Louis Padayachy (“Plaintiff”) against Gary Barbier (“Defendant”), the executor of the estate of his sister, the late Solange Padayachy (the “Deceased”). The Plaintiff challenges the last Will and Testament of the Deceased.
- [2] On 4<sup>th</sup> June 2014, Defendant filed a Defence generally denying the Plaintiff.

- [3] The hearing of the matter took place on the afore-mentioned dates and after hearing Learned Counsel for the Defendant, filed written submissions on behalf of the Defendant and of which contents have been duly considered.
- [4] For the purpose of this Judgement, the following are the relevant factual and procedural background to the pleadings
- [5] The Plaintiff maintains that the Deceased died on 12<sup>th</sup> January 2010 and that her Will is not in conformity with the law for the following reasons namely that, firstly, the signature of the Deceased that is on the Will is not hers; and secondly, that the Will was drawn up and signed at a time when the Deceased was not in a proper state of mind and/or capable of understanding what she was doing.
- [6] The Plaintiff, therefore, requests an Order declaring the Deceased's Will null and void and that her estate be distributed as per the rules of intestacy.
- [7] At hearing, the Plaintiff testified and presented the testimonies of Mr. Kieran Shah and Doctor Amaury Fundori Diaz and the Defendant testified on his own behalf.
- [8] The Plaintiff testified in a gist that, at the deceased, his sister's funeral, his niece Nariman Abel, informed him that there was a Will. He indicated that the next day he talked to Mr. Gabriel who confirmed that there was a Will, but that it was in Mr. Shah's possession. Though he indicated to Mr. Gabriel that he and his sister wanted to take a look at the Will, he testified that Mr. Gabriel never contacted them to show it to them. He testified that he never went back to see the Will, because he had to go back to the UK. He testified that the Will was registered around April 2010 and that he received a copy.
- [9] When asked who had prepared the Will, the Plaintiff testified that he was told by the Defendant that it was the solicitor, Mr. Gabriel, who had prepared it. Moreover, he testified that the Defendant had said that there were two witnesses present, sons of the Plaintiff: Francois and Dermoth. The Plaintiff testified further that according to Defendant, Mr. Valabhji had nothing to do with the Will. He testified that he went to see Mr. Valabhji to see the original of the Will and was told to come back in two days. Given that Mr. Valabhji was not present when he returned, Mr. Shah showed him the Will. The Plaintiff described the Will as follows:

*"I saw almost the same way, except it has got gaps in between, then there was a line, and a couple of signature at the bottom of it, so which looks like that has been prepared on a printer or a copier if you like."*

- [10] When asked whether his sister's signature was on the Will, he testified:

*"To be honest with you, I do not know my sister's signature, because this is not the one that he showed me anyway."*

[11] In explaining the difference between the document Mr. Shah had shown him in his office and the one Mr Shah had sent to Plaintiff's counsel, he stated that:

*"In the one he showed me in the office, there was no blue stamps on there, there was no stamps, there was only two signatures, there was a black line across the page, the two signatures at the bottom of it."*

He added that the black lines looked like they had been inserted into a copier.

[12] Regarding his sister's condition around the time she had allegedly made her Will in July 2009, he testified that he heard that she was in and out of the hospital, on dialysis, with what he thought to was type one diabetes.

[23] When asked how his sister called him, he stated that she used to call him Muthu. However, he maintained that it was strange for her to use the name "Muthu" in the Will and that his name is not written 'Muthu' but is written 'Mootoo'. He testified, however, that his sister had never written down his name somewhere else in the manner he was saying it.

[24] The Plaintiff additionally testified that another reason that indicates that she did not make the Will was that there was a mechanical workshop and a car (Daihatsu), which she could not have forgotten to include. He testified that he had transferred the car to his sister because he had nowhere to leave the car when he left for the UK. He explained that the workshop was not his, but was built by his nephew; and that it should have been mentioned.

[25] Given that his sister was an accountant, he explained that he misunderstood how his sister in her right mind could have forgotten to include these things in her Will.

[26] On cross-examination, he testified that he was not well acquainted and would not know the signature of the Deceased, because whenever she wrote to him she just signed "Solange" underneath. He testified that the Will that Mr. Shah showed him did not have the stamps of any lawyers and had the signature of the Deceased and that of Mr.Valabhji.

[27] Plaintiff further testified that all he wants was the money Deceased owed him and the car as well.

[28] Mr. K. Shah's Testimony confirmed that his late uncle Ramnikal Valabhji, a notary, prepared the notarial Will and that during his uncle's absence from Seychelles on medical treatment, he got the Will registered and transcribed. He testified that after sending the original for registration and transcription, he placed the original Will in the archives of his uncle. After his uncle's death, he testified that in accordance with the Notaries Act, he deposited his uncle's notarial documents with the curator of the Seychelles archives.

[29] Mr. K. Shah further testified that he did not have any information about the circumstances in which the Will was signed. He testified that he showed a male relative

of the Deceased, a copy of the Will in his office, but that he did not part with possession of the copy; he could not recall whether this relative was the Plaintiff.

- [30] On his part, doctor Amaury Fundori Diaz, a physician, stated that he reviewed the Deceased medical record and that based on her record there were no notes of deterioration of the Deceased's mental state; but that her general medical condition was deteriorating .
- [31] The Defendant as indicated earlier testified and reiterated his Statement of defence in a gist that the signature of the Deceased was genuine and that at the time of the drawing and signing of the Will the Deceased was in a proper state of mind and was capable of understanding.
- [32] I will now address the legal standards and its analysis based on the evidence led in this matter.
- [33] In his testimony and written submissions, the Defendant essentially maintains that Plaintiff has not come up with any evidence that challenges the signature of the Deceased; he did not call any expert witnesses nor did he produce any other documents showing her signature in order to compare with the signature in the Will.
- [34] Article 1324 of the Civil Code provides that: "When a party repudiates his signature, or when his heirs or assigns declare that they do not recognize them the Court shall decide the issue after hearing evidence."
- [35] Upon a thorough review of the evidence illustrated above, the Court finds that Plaintiff has not demonstrated that the Will at issue is not the Deceased signed Will or that the Deceased lacked the capacity to sign it.
- [36] It is trite law that he who asserts must prove and this is clearly evident in the matter of **(Gopal & Anor. v. Barclays Bank [2013] SCCA 23)**. While a copy of the Will was admitted as (*Exhibit P2*), Plaintiff has not introduced evidence that begins to sufficiently challenge the authenticity of the Will. Indeed, he conceded that he was unfamiliar with the Deceased's signature and did not provide any evidence of comparison that would assist in determining that the signature of the Deceased on the Will was not hers.
- [37] Moreover, the evidence presented by the Plaintiff, failed to indicate that the Deceased was not in a proper state of mind and/or capable of understanding what she was doing. Indeed, Dr. Diaz testified that there was no record of deterioration in the Deceased's mental state.
- [38] For the aforementioned reasons, Plaintiff's Plaint is dismissed with cost.

**Dated this ..... day of ..... 2018.**

**S. ANDRE J  
Judge of Supreme Court**