

IN THE HIGH COURT OF FIJI AT SUVA

PROBATE JURISDICTION

Probate Action No. HPP 65 of 2019

IN THE ESTATE of the late **DAVID ANAND PRASAD** of

Lot 1 DP 10997 Naganivatu Settlement, Naitasiri, Wailoku, Tamavua, Deceased testate.

BETWEEN

URMILA DEVI of Naganivatu Settlement, Naitasiri, Wailoku, Tamavua.

Domestic Duties

PLAINTIFF

AND

ASHLEEN ASHMITA PRASAD of Lot 13, Dokanaisuva Road, Tacirua Heights, Suva

Investment Officer

1ST DEFENDANT

AND

RAHUL AJESH PRASAD of 25 Fulaga Street, Samabula, Suva

Student

2ND DEFENDANT

Counsel : Ms. A. Singh for the Plaintiff
Mr. K. Jamnadas for the Defendants

Date of Hearing : 26th September 2022

Date of Judgment : 06th April 2023

JUDGMENT

- [1] The Plaintiff filed this Writ of Summons seeking an order for removal of the caveat lodged by the Defendants against the estate of late David Anand Prasad of Lot 1 DP 10997 Naganivatu Settlement, Naitasiri, Wailoku, Tamavua, deceased testate and for the grant of Probate of the Will dated 26th September 2017.
- [2] The Plaintiff is the Trustee and Executrix appointed under the Last Will and the deceased died on 10th August 2018. The Plaintiff lodged the application for Probate in the High Court on 12th September 2018. It was not granted due to the Caveat No27/2018 lodged by the Defendants on the 15th August 2018.
- [3] The Defendants claim that the deceased either did not possess the testamentary capacity at the time to know or approve the contents of the Last Will dated 26th September 2017 or the same was obtained by undue influence of the Plaintiff. Further the Defendants state

that the deceased created a Last Will with the assistance of Jamnadas & Associates on 23rd June 2016 which he approved the contents of the same and was in compliance of legal requirements for a Will. Therefore the Defendants seek the Court to pronounce the Last Will dated 23rd June 2016 as the proper Will before the law.

- [4] At the trial the Plaintiff called four witnesses. Ms. Pramila Swami stated that she was employed as a typist and a law clerk at Kholi and Singh Lawyers since 1984. She recalled 26th September 2017. The deceased came to their office with the Plaintiff to prepare his Last Will. The witness obtained instructions from the deceased in front of his lawyer, Mr. Raman Singh while the Plaintiff waited outside. Upon receiving instructions Ms. Swami prepared the will and it was again read to the deceased before signing the same. Mr. Raman Singh and she became witnesses to the Last Will marked in court as PE-1. The witness stated that the deceased was in good condition and agreed to the whole content. He further instructed the lawyer to have it registered immediately.
- [5] During cross examination witness stated that the deceased appeared and talked to her normal and she did not know of any illness. She explained the procedure followed in preparing the last Wills at their law firm. The witness accepted that the subject matter [Certificate of Title No 42537] of the sale and purchase agreement dated 15th September 2017 was also included in the Last Will she prepared. In re-examination she stated that the agreement itself is not a guarantee for the transfer to occur and the deceased owned the CT 42537 at the time of making the will.
- [6] The Plaintiff called two witnesses next related to Last Will made on 4th September 2017. They both employed at the Fiji Public Trustee. Mr. Eroni Matai who has been an Estate Officer stated that on 04th September 2017 the deceased gave him instructions at his office to prepare his Last Will. He was accompanied by his wife and she waited outside while the deceased provided him with instructions. The witness did not notice any duress from the deceased. His Last Will was prepared in four copies. It was read and explained to him by the witness before obtaining his signature. During cross examination the learned counsel for the Defendants highlighted at 3.1 of the Will the properties were not referred in the Title Certificate number but by Lot number. Witness stated that the deceased did not pick up the registered copies of his Will. However he confirmed that he did not see any duress from the deceased.
- [7] Mr. Ovinia Suka, Trust Officer at Fiji Public Trustee, stated that he witnessed the 04th September 2017 Will (PE-2). The deceased was explained of the contents and he signed in front of this witness. According to the witness, the deceased was in proper physical and mental condition at the time of making this Will.

- [8] Ms. Urmila Devi, Plaintiff gave evidence next. Both deceased and she were divorcees before their marriage on 04th June 2014. They were together with the adopted daughter of deceased in one household. Two years from their marriage the deceased was diagnosed with renal failure. In 2016 the deceased needed dialysis. However the Plaintiff stated that he wanted his biological children to take care of his treatments. The 1st Defendant paid for the first two treatments. Upon his discharge from the hospital the deceased was on medication and the Plaintiff assisted to take him to hospital.
- [9] On 26th September 2017 Plaintiff stated that she accompanied the deceased as he wanted to make his Last Will. The deceased had the Will (PE-1) registered and gave a copy to Plaintiff for safe custody. She stated that according to the Will the deceased gave his property to the Plaintiff and her children and not his biological children. The deceased passed away on 10th August 2018. During cross examination she stated that she took him to dialysis since he was diagnosed with this illness and that she never told the doctor to allow the deceased to die peacefully. She said she is the one who signed the consent form and she wanted his life to be saved. She said she accompanied him most of the time as his wife. The Plaintiff dined that she stopped the deceased's relatives coming to visit him. She said that in 2016 she left the deceased due to the stress that was building on her. However the deceased came to pick her up again. Plaintiff stated that the adopted daughter of the deceased lived with them and she treated her well. She stated that she supported her for house work.
- [10] Plaintiff stated that the deceased allow her to use his money. And that she knew the deceased got FNPF funds for the treatments. She did not know the deceased's intentions to give his property to Jacinta or other children. When the deceased passed away the Plaintiff contacted his uncle as there was no contact of his children. However later his son who is the 2nd Defendant came and swore at her and she asked him not to come and listen to the radio for funeral arrangements. She has completed his final rituals according to Christian belief as she was a Jehovah's Witness and that he never forced the deceased to convert and follow her belief. However the 2nd Defendant turned the switch on at the crematorium for the deceased's cremation.
- [11] 1st Defendant was called as the first witness of the Defendant's case. She was the biological daughter of the deceased. She stated that her parents were divorced but she had a very good relationship with the deceased before his marriage with the plaintiff. In 2014 he has mentioned his intentions to settle down and later got married to the Plaintiff. He reduced the conversations with the 1st Defendant thereafter and she believed that it was due to her stepmother's influence. However she met him outside their residence. In early 2016 she visited him in the hospital when he was diagnosed with the renal failure. The deceased has informed his willingness to go for dialysis and the 1st Defendant has stated that she

spoke with the doctors and done her own research about the treatment and the need for continuity. She stated in Court that the Plaintiff was against the idea of deceased receiving dialysis. After the initial discharge from the hospital the 1st Defendant visited him more frequently as he needed special diet. She used to take him the food recommended by the doctors. However she was never invited into the house and the Plaintiff was present whenever she talked to her father. She did not get an opportunity to talk to her sister Jacinta who lived with her father.

- [12] The deceased was again hospitalized in April 2016. 1st Defendant stated that when she visited him this time at the hospital he screamed "save me ...save me". The Defendant knew that her father was not in a good condition. She paid for the initial dialysis charges. After he became stable she spoke to him about continuation of dialysis treatment. The 1st Defendant supported his father's loan with a weekly payment of \$150 until June 2016. The deceased had intention to use part of his FNPF money for the treatments. According to her, the deceased has only asked her to support with his loan payment. After the treatments the deceased felt better and was back on his feet in April. She stated that after this episode her and the brother started go into the house where deceased and Plaintiff lived. The visits became more frequent.
- [13] In June 2016 the Plaintiff left the house. The 1st Defendant stated that her bother moved in to stay with their father and started providing for him and the younger sister. The deceased got a full withdrawal of his FNPF money and also had plans to subdivide his land for sale. The Defendant states that during this period the Plaintiff moved in again. The 1st Defendant was asked to pay for the Certificate of Title on this subdivision and she had paid to obtain the same. In September 2016 she received a call from the father and said not to visit him anymore and the Plaintiff can look after him. The Defendant states that she could hear Plaintiff's voice from the background saying him "Say it" in a firm voice. She said that her father didn't sound normal. That was the last conversation she had with him. She heard about her father's death and came to know about the arrangements through the radio. She said the funeral was done according to Christian faith without any mention about his children.
- [14] She further stated that her father always wanted his children to have the property after him and a Will was done in 2016. She was given a copy of this will dated 23rd June 2016. The Defendant came to know about this Will after it was done. During cross examination the 1st Defendant stated that Plaintiff did not want her father to go through dialysis but she signed the consent form after the deceased pleaded with Plaintiff. She stated that the 23rd June 2016 Will was done after he received dialysis and that he was in a good condition, however she did not know whether he was getting any treatments when the Will dated 26th September 2017 was done. She said that they never abundant his father and it was

because Plaintiff moved in, they had to stop the relationship. She stated that they never compel her father to prepare any Will.

- [15] The Defendant also stated that she had to return the Certificate of Title in the police station and receive her payment of \$600 spent on subdivision. The deceased has also claimed maintenance from her and bother in 2017. The Defendant states that they are unaware why he didn't approach them directly for money without going through a Court process. The orders were obtained uncontested.
- [16] Mr. Ram Lal, uncle of the deceased was called next by the Defendants. He stated that he used to drive for the deceased and the Plaintiff during the period he was sick. The deceased also had shared his wishes about his property. According to the witness the deceased never wanted to sell any property. Witness stated that they never discussed things when the Plaintiff was around. She was listening to their conversations. On a day inside the car the Plaintiff has told not to have dialysis as it is costly. Witness also stated that the deceased never discussed anything about Plaintiff's children. After the death when this witness visited their house Plaintiff has told him that she pushed the deceased, he fell and died. However this was the first time he came out with this incident. He said he never reported this to police or anyone else.
- [17] The 2nd Defendant gave evidence next. His evidence was very much similar to the 1st Defendant. He informed that his father wished his properties to be inherited by him as his son and his child in future. He stated that deceased had several relationships before get married to the Plaintiff. The relationship he had with the deceased restricted after this marriage. He stated that the deceased got sick in February 2016 and again in April. During the second hospitalization the deceased screamed to him "save me" when he first saw him. The dialysis was given and he felt better. When he was discharged the 2nd Defendant visited him on more occasions at his residence. In June 2016 the Plaintiff left the deceased and 2nd Defendant moved in to his house. Both Defendants helped their father to provide food and other needs during this time. In June 2016 the Defendant stated that his family became very close again. The deceased prepared a Will [dated 23rd June 2016] and informed the 2nd Defendant about this. He remembered that the Monday after the 2016 father's day the deceased called him to say that the "Plaintiff wants to come back. She is threatening me to take divorce. I am not in a position to go through legal process again. I will take her. But the Will I made is yours". The Deceased has said that he did not want any half share to go to Plaintiff. The Defendant immediately moved out from the house and later the deceased has called him again to take their younger sister Jacinta as Plaintiff did not want her in the house. He heard his father's disturbed voice and it was not usual. After this he did not have any conversations with the deceased. The Defendant was asked about the maintenance application filed by the deceased in 2017 and he said they did not

want to contest and was surprised why they filed an action in Court without simply contacting him or sister. The Defendant stated that he never swore at the Plaintiff when he went to their house after hearing his father's death. It was merely releasing his frustration to himself and not meant for Plaintiff. He further stated that he has never seen his father was controlled by anyone in that manner before.

- [18] Mr. Atishwar Nair called next by the Defendants. He was the brother in law of the deceased. He stated that his wife and the deceased associated closely and used to visit each other. However things changed after deceased got married to the Plaintiff. He was never allowed in his house. The deceased has shared his intentions with the witness to pass the property to his three children. He further stated during cross examination that this year the Plaintiff contacted him to come to a car park in the town she was in her car. The witness sat with Plaintiff and she has said that when the time comes she will tell him what to say in Court. If she wins the case that she will give him something. Witness refused any benefit from the Plaintiff.
- [19] Mr. Uttampath has testified thereafter. He was the uncle of the deceased. He too stated that the deceased wished his properties to be given to his three children. In April 2016 witness helped the Plaintiff to take the deceased to the hospital. Witness stated that the Plaintiff did not want the deceased to receive dialysis. Also he said that he only had short conversations with the deceased when the Plaintiff was present. According to him the deceased was scared of the Plaintiff. He further stated that the deceased was in good health in June 2016. However he was never invited to their home after Plaintiff returned in 2016. He further said that the deceased never talked with him about the Plaintiff's two daughters.
- [20] Ms. Madonna Fong, Legal Practitioner called by the Defendant to testify on the Will dated 23rd June 2016. She stated that in 2016 she was an Associate at Jamnadas and Associates and the deceased signed his Will [DE-2] after she explained the contents to him before the witness. Before this the witness has observed that the deceased was in proper mental and physical capacity to understand the nature and the consequences of the document. According to witness the deceased came alone to their law firm to sign this Will. During cross examination witness stated that the document was not prepared by her. The deceased informed that he has recovered from a sickness. The Last Will was in more general terms and she said that this is very common in her experience as a lawyer. She admitted that she forgot to cross off the 'Hindustani' word however she explained the will in English as the deceased was conversant in English.
- [21] Ms. Agnus Mitchell who witnessed the 23rd June 2016 Will stated that he knew the deceased since 2007 as he used to visit their law firm often. She said that the Will was

explained to the deceased in English by Ms. Fong and he agreed to the contents before signing the same. Witness stated that he came alone to make this Will. She further stated that the deceased appeared fine to her on that day.

- [22] Ms. Jacinta Prasad, younger sister of the Defendants who lived with the deceased, called as the final witness for the Defendants. She was 15 years in 2016. She stated that she had been with the father before and after he married the Plaintiff. She said before all her siblings and relatives used to visit their home more frequently however that changed with Plaintiff's joining in to the family. According to her the Plaintiff controlled her father by just looking, and yelling at him. The Plaintiff went on to the extent of physically pushing the deceased. However her dad did not retaliate. The witness was not allowed to contact her other two siblings. She used to write letters on her own free will saying good about the Plaintiff thinking that she might change her attitudes towards her father and her. The witness used to cook, clean and do most of the house work while studying. The Plaintiff left in June 2016 and her siblings came back to look after her father. According to her, the deceased started living a normal life. However in September 2016 Plaintiff returned. Plaintiff then said that it was her home and she did not want anyone to be there. She has said that the witness is someone with 'Bad blood' and that she does not want her at home. The deceased called the 2nd Defendant to take her out of their house. The next day she made an attempt to harm herself at school and the teachers got involved to inform this to her mother (ex-wife of the deceased). She stated that when her father diagnosed with the renal failure, the plaintiff did not want him to have dialysis saying it is waste of money.
- [23] According to the witness the Plaintiff made decisions for the deceased. Her father was a weak person in front of her. Witness stated that the Plaintiff could get her father to do anything. During cross examination witness stated that in June 2016 the Plaintiff left because of her siblings started helping the deceased and visiting him at home.

The Law and Burden of Proof

- [24] The capacity to make a Will is determined by the testator's state of mind. The testator must be mentally capable of making the Will. The testator must know and approve of the contents of the Will and it must not be made on undue influence or fraud. In **Banks v Goodfellow** [1870] 5 QB 549 it was stated that the testator must have testamentary capacity at the time when he executes the Will. Alternatively it suffices if the testator has testamentary capacity at the time when he gives instructions to a solicitor for the preparation of the will provided that the will is prepared according to his instructions and at the time of execution he is capable of understanding.

- [25] It was held in **Perrins v Holland** [2010] EWCA Civ 840 the need for knowledge and approval does not import any additional requirement of testamentary capacity at the moment of execution.
- [26] The legal burden of proof always be with the person propounding a Will, to prove that the testator had testamentary capacity at the time of the making of will. The evidential burden of proof may shift from one party to the other in the course of the case.
- [27] If a duly executed Will is rational on the face of it a presumption arises that the testator had testamentary capacity **Sutton v Sadler** [1857] 3 CB (N.S) 87. However this is a rebuttable presumption. The person challenging the Will may rebut this by bringing evidence of a real doubt as to capacity. **Key v Key** [2010] 1 WLR.
- [28] Another rebuttable presumption is if the testator suffered from serious mental illness, that it continued and the testator did not have the testamentary capacity.
- [29] In the recent years there has been discussion in the case law on the interrelation of the tests for testamentary capacity and want of knowledge and approval. In **Perrins** the court held that the testamentary capacity was a prerequisite for knowledge and approval. Which means if the former was not shown, there is no need to look for the latter. On proof that the testator was of testamentary capacity and that he duly executed the will, in ordinary circumstances a rebuttable presumption arises that he knew and approved of its contents at the time of execution, **Sherrington v Sherrington** [2005] EWCA Civ 326. The evidential burden then shifts to the party opposing the will to rebut the same. If he does so then the person propounding the will must produce affirmative proof of the testator's knowledge and approval so as to satisfy the legal burden of proof.
- [30] Another important aspect of the law relating to Wills is that a Will must not be prepared as a consequence of either undue influence or fraud of another person. Undue influence means coercion. Undue influence comes in many different forms. In extreme cases there may be violence to the testator. As in **Wingrove v Wingrove** [1885] 11 P.D 81 the pressure exerted by talking insistently to a weak and feeble testator in the last days of his life may so fatigue his brain that he may be induced, for quietness sake, to give way to the pressure.
- [31] A testator may be led but not driven **Hall v Hall** [1868] 1P&D 481. This means a testator may be persuaded or provided advice, but not coercion. In **Bennett v Petit** [2013] EWHC 955 in which nagging by family members was dealt with as a matter of whether the deceased knew and approved of contents of the will, and not by way of undue influence.

- [32] The Supreme Court in *Ho v Ho* Civil Appeal CBV 004/97 held that 'central to the appellant's case is the proposition that fraud is and was pleaded as a distinct ground of attack on the Will, independent of undue influence. Although fraud has been regarded sometimes as a species of undue influence and fraud is sometimes an element in the proof of a case of undue influence, fraud is now acknowledged to be an independent ground for setting aside a will (*Boyse v. Rossborough* (1857) 6 HLC 2; *Parfitt v. Lawless* (1872) LR 2 P&D 462 at 470-471). The difference between undue influence and fraud in the sense of fraudulent misrepresentation was well explained by Lord Cranworth L.C. in *Boyse* at 44-45 in a passage where it appears that in the former case the victim's will is coerced through fear and in the latter the victim's will is induced by fraud. This difference is fundamental to the appellant's case'.
- [33] The Court found in *Schrader v Schrader* [2013] EWHC 466 (Ch) that the testator had testamentary capacity and knew and approved of the contents of the Will, but the Will was nonetheless invalidated by undue influence. This was due to the testator's vulnerability and dependency on her son. There was no reason for the testator to want her son to have her house. There was evidence that the son perceived an injustice that the other son had been better treated.
- [34] Similarly in *Schomberg v Taylor* [2013] EWHC 2269 (Ch) the testator was both mentally and physically fragile. She was subjected to persistent pressure which wore her down so that she was prepared to do what her niece said to have a quiet life.
- [35] The legal burden of proof of undue influence or fraud lies on the person alleging the same. In *Craig v Lamoureux* [1920] A.C 349 it was held that it is not sufficient merely to show that the circumstances attending the execution of the Will were consistent with its having been obtained by undue influence, or that another person had the power unduly to overbear the Will of the testator.
- [36] As stated in *Schrader* it will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no-one is looking. That does not stop its being proved. The proof has to come, if at all, from more circumstantial evidence.

Analysis

- [37] There are three Wills submitted during the trial. Two by the Plaintiff and one by the Defendants. The Will prepared by the Fiji Public Trustee dated 04th September 2017 has been superseded by the Will dated 26th September 2017. The two witnesses called by the Plaintiff in relation to the 04th September Will testified on the testamentary capacity of the

deceased. According to their evidence the deceased had the knowledge and approval of the contents of the Will. However the deceased did not come to collect this Will.

- [38] The Plaintiff was able to call the law clerk who took instructions and later became a witness to the Will dated 26th September. According to her the deceased was in good condition while preparation of the Will and its execution. She said that the deceased agreed to all the contents.
- [39] In clause 4 of the 26th September Will, two properties have been mentioned by the deceased. The Court notes that out of the two, CT No. 42537 property has been subjected to a Sale and Purchase Agreement made by the deceased on 15th September 2017. The Plaintiff argued that a Sale and Purchase Agreement would not automatically transfer a property unless there has been registration by the Registrar of Titles. The Court further notes that the transfer has been made effect by the Registrar of Titles on 24th November 2017. Nevertheless the fact that a land that has been subjected to a sale has been included in a person's Last Will raises concerns on the deceased's knowledge and approval of the contents.
- [40] There is no evidence before the Court to consider whether there has been any mistake made either by the testator or by the drafter. It is possible for the drafter to include something contrary to the testator's instructions and then the testator signs without noticing the error. On the other hand as the Plaintiff claims the Sale and Purchase was not effected on the date of the execution of the 26th September Will. In any event I am of the view that including a property that has been subjected in a Sale and Purchase Agreement would not make the whole Will invalid.
- [41] Either party did not provide any medical evidence in the trial to ascertain deceased's medical capacity to make the Wills. Therefore the Court has to rely on the evidence given by the witnesses. According to Ms. Pramila Swami the Law clerk at Kohli and Singh Lawyers the deceased did not appear as a person who lacked knowledge and approval of his instructions. It is same for the 4th September Will according to the witnesses Mr. Eroni Matai and Mr. Ovin Suka at Fiji Public Trustee.
- [42] However the Court needs to consider whether there had been any undue influence on the deceased during the period of making the 26th and 4th September Wills.
- [43] The witnesses who attended preparing both these Wills stated that the Plaintiff accompanied the deceased in both instances. Though she was asked to wait outside the place where the Wills were executed, she was in the premises before and after making the

Wills. Evidence shows that after the deceased was diagnosed with the kidney failure, a driver has been involved in their trips.

- [44] The deceased got married to the Plaintiff in June 2014. The Defendant's evidence shows how the deceased was restricted to associate his biological children and other relatives. Witness Mr. Atishwar Nair who did not have any interest in the properties of the deceased stated that he was never called to the deceased's house after he married the Plaintiff and only once the deceased came to his place.
- [45] The two Defendants came close again with their father when he got admitted to the hospital for the first time in February 2016. Both Defendants stated that they went to visit him at his place after he was discharged from the hospital. These meetings did not last long as the Plaintiff called the deceased to rest or take medicine. Also they were not invited inside the house and the deceased spoke to them through the grill door at the main entrance. All these meetings have been observed by the Plaintiff. The Plaintiff opposed to the idea of deceased receiving dialysis. However the 1st Defendant arranged the payments for his treatments when he was again admitted in April 2016. After this the Defendants were allowed to visit him inside his house. Yet the Plaintiff reacted by dropping pots and pans whenever the Defendants were with their father.
- [46] In June 2016 the Plaintiff left the home. However the deceased was looked after by the two Defendants. The 2nd Defendant moved in to stay with his father. According to Ms. Jacinta Prasad her father started living a normal life during this period. However the evidence states that the Plaintiff returned in September 2016. It appears that the returning occurred as a result of a threat induced by the Plaintiff. According to the evidence of the 2nd Defendant the deceased has told him that "Plaintiff wants to come back. She is threatening me to take divorce. I am not in a position to go through legal process again. I will take her. But the Will I made is yours".
- [47] The Court notes that immediately after Plaintiff returned, she sent the younger daughter of the deceased away. She had been the most loved child of the deceased. However she was sent away by the Plaintiff. The deceased was pressured by the Plaintiff not to contact the two Defendants who were his biological children. And in fact Defendants after September 2016 did not have any contact with their father.
- [48] Even after he passed away the evidence shows that the Plaintiff did not want to share the funeral arrangements and asked the 2nd Defendant to listen to the radio for funeral arrangement. There was no mention about his biological children at the funeral service. It is therefore clear that the Plaintiff had much control over the deceased.

- [49] According to Jacinta the Plaintiff made decisions for the deceased. Her father was a weak person in front of her. Plaintiff could get her father to do anything.
- [50] The Defendant's evidence has established that the Plaintiff managed to remove anyone other than her own family from the deceased. A person who is suffering from a life-threatening illness like kidney disease becomes a vulnerable personality. And the person becomes critically vulnerable if someone takes out his loved ones or close family members who could provide him any emotional support. The deceased became isolated. Thus it is not a case of single incident of undue influence. I am of the view that the influence continued on the testator over a period of time.
- [51] This isolation continued for 12 months from September 2016 before the deceased made 4th September Will with Fiji Public Trustee. And there after the 2nd Will executed on 26th September.
- [52] The preparation of 4th and 26th September Wills were taken place when the testator was under clear control of the Plaintiff. At this stage the deceased was completely depending on the Plaintiff. From the evidence leading up to this stage, it was very clear that the Plaintiff would not allow the testator to have anything done in favor anyone else other than someone the Plaintiff would approve. The Court classifies this conduct of the Plaintiff as undue influence on the testator. Therefore the Court rules both Wills made on 04th September 2017 and 26th September 2017 are invalid.

The Will - dated 23rd June 2016

- [53] According to the witnesses the deceased has expressed his wishes that he wanted his three children to have his property after him. In June 2016 the deceased lived a normal life though he was receiving treatments. He did not have any contact with the Plaintiff during this period. The Solicitor and the clerk at Jamnadas and Associates testified that the deceased was a long standing client of their firm. And he understood and approved the contents of the Will dated 23rd June.
- [54] It was also noted that the deceased never discussed about his property distribution with any of the beneficiaries before he made this Will. It was discussed after making of the Will. He has given a copy to the 1st Defendant and also told his wishes to the 2nd Defendant that he wanted his properties to be inherited by his children and their future generations.

- [55] There was no evidence of any undue influence or fraud. Having applied the legal principles discussed earlier and considered the evidence adduced before the Court, I am of the view that the Defendants were successful in proving the Will dated 23rd June 2016.
- [56] Accordingly I make the following orders.

ORDERS

1. Plaintiff's claim is wholly dismissed.
2. I pronounce against the Wills dated 04th September 2017 and 26th September 2017.
3. The Will dated 23rd June 2016 is valid and admitted by the Court.
4. Cost assessed at \$2000 (two thousand dollars) and shall be paid by the Plaintiff to the Defendants within 14 days.



Yohan Liyanage

JUDGE

At Suva on 06th April 2023