

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 85 OF 2016

BETWEEN : **SAIRA BANU** also known as Saira Begum of 18 Corbett Street,
Drasa Vitogo, Lautoka, engaged in Domestic Duties.

PLAINTIFF

AND : **GARY JACKSON CARTER** of 26 Armein Road, Panmure,
Auckland, 1741, New Zealand, Driver.

DEFENDANT

Appearances : Mr R. P. Chaudhary for the plaintiff

: Ms N. Khan for the defendant

Date of Hearing : 21 June 2018

Date of Judgment : 19 September 2018

J U D G M E N T

Introduction

[01] The plaintiff brought this action seeking among other things a declaration that the late Abdul Gaffar's (*'deceased'*) Will dated 25 November 2009, was revoked by his later Will dated 24 January 2014.

[02] The defendant pleaded that the Last Will and Testament dated 25 November 2009 of the deceased has not been subsequently revoked by any other Will, the subsequent Will was a forged one, and sought among other things dismissal of the action with costs.

[03] At the trial, the plaintiff did not give evidence. Her only witness was Pravin Narayan Gosai (Gosai), one of the attesting witnesses of the alleged later Will of

Abdul Gaffar. The defendant gave evidence on his own behalf and called a New Zealand handwriting expert witness, Mike Maran in support of his claim.

[04] Both parties have also filed closing submissions. I am grateful for counsel for their hard work.

The Background

[05] The background facts are as follows.

[06] Saira Banu, the plaintiff is the widow of Abdul Gaffar. Abdul Gaffar, (the deceased) died on 2 August 2015. The deceased executed a Will dated 25 November 2009 ('2009 Will'), which bequeaths a one third share in Housing Authority Leasing number 301799 (known as Lot 34 on DP 4333 containing an area of 18.1 perches) to Gary Jackson Carter, son in law of the testator and therein Gary Jackson Carter, the defendant is named as the Sole Executor. On 12 November 2015, the defendant had obtained the probate number 57599 with the 2009 Will annexed. At the time when the testator executed the 2009 Will, the defendant was his son in law. He was married to the testator's daughter, Ruksana Raheen Banu. The marriage was dissolved on 13 October 2011.

[07] The plaintiff alleges that the deceased executed a subsequent Will dated 24 January 2014. The alleged subsequent Will appoints Saira Banu as the Sole Executrix and Trustee and bequeaths all his (deceased) property both real and personal unto Saira Banu, his wife and Ruksana Raheen Banu, his daughter.

[08] The plaintiff says the subsequent Will of the deceased had revoked the earlier Will (2009 will) executed by the deceased.

The defendant's case

[09] The defendant's stance was that the Last Will and Testament dated 25 November 2009 of the deceased has not been subsequently revoked by any other Will; and Probate has been duly granted by the High Court on 12 November 2015 pursuant to the Last Will and Testament of the deceased dated 25 November 2009. In addition, the defendant also pleaded that the subsequent Will of the deceased was a forged one; the signature of the deceased is not his true and proper signature.

Counterclaim

[10] By way of counterclaim, the defendant says that the deceased duly executed his true last Will dated 25 November, 2009 and therein named the defendant, Gary Jackson Carter Sole Executor. The defendant counterclaims:

- a. That the Court will pronounce against the said alleged Will propounded by the plaintiff;*
- b. That the court do pronounce in solemn form of law for Probate No. 57599 of the said Will of the deceased dated 25 November 2009;*
- c. That the Court do award costs in favour of the defendant of this action; and*
- d. Any other and further relief that the Court deems just fit.*

Agreed Facts

[11] At the Pre-Trial Conference (“PTC”) held between the solicitors for the plaintiff and the solicitors for the defendant on 15 May 2017 at Lautoka, the following facts were admitted:

- i) The plaintiff is the widow of Abdul Gaffar also known as Abdul Gaffaar late of 19 Corbett Street, Drasa Vitogo, Lautoka, Retired Mechanic.
- ii) Abdul Gaffar also known as Abdul Gaffaar died [on] 2 August 2015.
- iii) Abdul Gaffar also known as Abdul Gaffaar executed a Will dated 25 November 2009 in the office of Messrs S B Patel and Company wherein the defendant Gary Jackson Carter was appointed as the Executor and Trustee.
- iv) The defendant Gary Jackson Carter obtained Probate Number 57599 on 12 November 2015 pursuant to the Will dated 25 November 2009.

The Law

[12] The plaintiff attempts to propound a Will. As such, the relevant law applicable to her claim is section 6 of the Wills Act 1972 (WIL 6), which provides:

“6 A will is not valid unless it is in writing and executed in the following manner-

- (a) *it is signed by the testator or by some person in his or her presence and by his or her direction in such place on the document as to be apparent on the face of the will that the testator intended by such signature to give effect to the writing as his or her will;*
- (b) *such signature is made or acknowledged by the testator in the presence of at least 2 witnesses present at the same time; and*
- (c) *the witnesses attest and subscribe the will in the presence of the testator, but no form of attestation is necessary.*

The Evidence

Plaintiff's Evidence

- [13] The plaintiff refrained from giving evidence. She was present in court when the trial commenced on 21 June 2018. Her counsel informed the court that the plaintiff was unwell. There was no medical certificate to confirm her medical condition. I had the opportunity to observe the plaintiff when she was in court. As I observed the plaintiff, she appeared normal and did not appear that she was unable to give evidence.
- [14] The only witness called by the plaintiff was Pravin Narayan Gosai (Gosai) ('PW1') who was one of the witnesses that attested and subscribed the 2014 Will, the subject matter of this case. The entire claim of the plaintiff rests on evidence of the single witness, PW1.
- [15] PW1 in his evidence states:
- a) He is a senior clerk at Chaudhary & Associates.
 - b) He has known Abdul Gaffar as a client. Gaffar had visited his office on a number of times. Previously he (PW1) had executed a transfer document for Gaffar.
 - c) He said he got instructions from Abdul Gaffar and made a Will for him on 24 January 2014.
 - d) He produced the office attendance register and told the court that Gaffar had made an appointment to come at 11.00 am. His wife Saira Banu also came with him. Gaffar's name is recorded for payment of \$100.00 for the Will. The receipt number 85684 dated 24 January 2014 (PBoD-4) has been issued in the name of Abdul Gaffar.

- e) He produced personal attendance diary where Abdul Gaffar's name is entered on 24 January 2014, the day the Will was executed.
- f) He said Abdul Gaffar came with his wife Saira Banu and the Will was executed in her presence also. It was explained to him in the presence of the other witness (Roshni Devi) in the Hindustani language. The instruction was given by Gaffar not Saira Banu.
- g) He could not produce the written instruction given by Gaffar to prepare the Will.

[16] In cross-examination, PW1 states:

- a) When ask if he had brought the purported Wills file, he said: 'we did not create files for the Will.
- b) He was taken through the office attendance diary (Tab 5 of the Plaintiff's Bundle of Document (PBoD) and was asked to explain why Gaffar's attendance at 11.00 am with Mr Chaudhary was listed before next attendance which was at 9.50 am. With much hesitance, he came up with an explanation that Gaffar made an appointment for 11.00 am but he came earlier at 9.30 am with his wife and that's why the attendance book showed 11.00 am. He could not explain how an attendance book showed appointment. (It will be noted that Gaffar's name has been interpolated on top of the office attendance diary as the first attendee for 24 January 2014 with the different handwriting and different pen).
- c) He was also asked why the attendance book showed Gaffar saw Mr Chaudhary. To which, he said that someone made a mistake in the entry.
- d) On entry No.9 which shows that Saira Banu (plaintiff) who paid \$100.00 for a Will. Then he came at 10.30 am. He (PW1) states that because the plaintiff came with Gaffar that's why her name was put on the book, but he could not explain why it was recorded to say that she came for a Will and that she paid \$100.00.
- e) Although he maintained that Gaffar and the plaintiff came to give instructions, he was unable to explain why plaintiff's attendance was entered as 10.30 am in the attendance book.

- f) The entry No. 8 of the attendance book shows that a Mr Trend Larson came by appointment which is different to Gaffar's entry which does not state appointment. PW1 was unable to offer an explanation for this.

Defendant's Evidence

- [17] The defendant's first witness was Mike Maran (Maran) (DW1), a hand writing expert (DW1). His expertise and experience in the field was not challenged by the plaintiff. He has 30 years of experience in handwriting analysis. He produced and confirmed the contents of his report prepared at the request of the defendant ('DE-2'). He under analysis and observations at section (para 10 of his report) states:

"10. Analysis and Observations.

Both Q1 and K1,2,3,4 consisted of illegible complex upper loops with entanglements and intersections. On close inspection I did detect some fundamental dissimilarities, these are listed below and are displayed pictorially. These are:

- (a) Upward curl of the terminal stroke on Q1 differs (see pictorial chart)*
- (b) Initial stroke on Q1 starts on the outside of the 1st loop. (see pictorial chart)*
- (c) The letter spacing between the 1st and 2nd upper zone loop is wider. On Q1, this measures at the top of the apex at 7.mm. The corresponding trait on the knowns measured between 2.52 and 4.43 mm.*
- (d) Under microscopic examination there is pen lift on the top of the 1st loop. This could be a sign of hesitation from the author. The originals would be required to verify this. (see pictorial chart).*
- (e) There were extra pen strokes and intertangled knots on the final completion of Q1. (see pictorial chart).*
- (f) The 1st loop is contaminated by an internal apex. This trait was not prominent on the knowns. (see pictorial chart).*
- (g) The oval letter on Q1, which could be an 'a' or 'o', was not detected on the knowns. The oval letter had a single loop between 2 connecting strokes, which was also not evident on the knowns. K1,2,3,4 did not display any middle zone or distinct oval letter formations.*
- (h) Width and shape of the 1st loop on Q1 is narrower.*
- (i) The lower loop has uncertain pen path, evident on the end curve of the loop which extends below the printed line. Not detected on the knowns.*

There were a couple of coincidental similarities; these may have been due to the unconscious act of writing, while trying to copy the known signatures. These included.

- (a) Angular type letter connections similar.
- (b) All the signatures consisted of a series of loops and complex intersections.

[18] DW1's conclusions and opinion is that:

"Findings and Opinion.

Mr Gaffer displays an inconsistent signature style and with some variation on each of his known signatures. For contemporaneous dating purposes K4 was signed in 2015 and Q1 signed in 2014. This was an important factor for comparison purposes, as each signature had distinct inconspicuous dissimilarities as outlined above. These differences detected of the pictorial traits and class characteristics are evident on Q1. However there are some limitations which have restricted me from coming to a more positive opinion. Therefore I have determined that Abdul Gaffer probably did not sign the signature attributed on Q1. (see attached annexure)

Additional Notes.

No persons do sign, write or print in exactly the same way each time. This is known as natural variation. Emotional, personal, evolution of time and medical circumstances could affect the signature traits. However most people do retain their own personal signature or writing style."

- [19] In cross-examination, DW1 admitted that signatures could be different even if signed one after the other.
- [20] Then the defendant (DW2) gave evidence. Abdul Gaffar was his father in law. He was married to his (Gaffar's) daughter, Ruksana Banu but now divorced. His evidence was as follows:

"In late 2009, when my marriage to Rukshana was well and truly on the rocks and I had been given an alternative to live the family home, I told my then father in law what was happening and that I would probably need to take off the property, the self-contained accommodation unit that I had built for him to relocate so that I would have somewhere to live. He did not want to move back to the main house and was quite obvious that he was not wanted in the main house and he actually made a proposal to me that if I lift the self-contained accommodation unit on the property for him to live in and paid him a monthly payment what we called, amount of money every month, for the rest of his natural life, that he would make a Will in my favour for his one third share of

the property expressly because of the amount of time, labour and money that I had put into working on their house and to ensure that he had a permanent accommodation and a permanent income and duly had the Will made and gave me a copy in an envelope and I started paying him money from November 2009 sometimes on the weekly/fortnightly basis right through until I left Fiji to live in New Zealand in February 2011. Thereafter, I started making monthly payments to him via Western Union or, there was another agency, that sometimes I sued, I can't remember the name now and the arrangement was that he would go to a neighbour friend on a day in near the end of each months and that friend would text me Mr Garfar waiting for his money I would go to Western Union send the payments, text the transaction number back and he will go and collect his money and that went on, regularly right through until, I can't remember, in the last six months or so of his life. It was a bit difficult for him to get out and make contact with me. The last payment I send him was, I think, two months before he died."

- [21] Under cross-examination, he confirmed that he made payments for \$400.00 per month towards mortgage and paid for all household expenses, food, power, electricity and water. He admitted that Ruksana was also working and brought money into the house. He said: 'we had an arrangement and as long as I make a regular income for the rest of his natural life that he (Gaffar) was going to give me his 1/3 share of the property.' He said: '*I never thought of it (making some sort of a deed with Gaffar), quite frankly. He told me that he made the Will, he gave me a copy in a sealed envelope which I opened on a morning after I was advised of his passing.*'

Discussion

- [22] The plaintiff predominantly seeks a declaration that the deceased's (Abdul Gaffar) Will date 25 November 2009 (2009 Will) was revoked by his Will dated 24 January 2014 (PBoD-3) (*the subsequent Will*). In other words, the plaintiff is endeavouring to propound the subsequent Will, which bequeaths the testator's 1/3 share in the property in dispute to the plaintiff, testator's wife (now widow) and to Ruksana Banu, testator's daughter. The 2009 Will gives the property in dispute to the defendant, the testator's son in law.
- [23] It was not in dispute that Abdul Gaffar executed a Will dated 25 November 2009 and the defendant obtained probate with the 2009 Will annexed on 12 November 2015 (PBoD-6).

- [24] The issue to be determined by the court turns out to be whether the subsequent Will was properly executed by the testator.
- [25] The plaintiff asserts that the testator revoked the 2009 Will by executing the subsequent Will. The burden is therefore on the plaintiff to propound the subsequent Will. The plaintiff has put in issue the validity of the subsequent Will.
- [26] Indeed, it is another allied principle of evidence that one who asserts must prove a party adverse to such assertion not having to do anything until that is done: *Ram v Ram* [2017] FJCA 98; ABU 29.2014 (14 September 2017).

The 2009 will

- [27] Before I deal with the subsequent Will, it would be appropriate to understand the reason and the circumstances in which the 2009 Will was made in favour of the defendant, the testator's son in law.
- [28] There was an arrangement between the testator, the defendant's then father in law and the defendant that the defendant is to build an accommodation unit for the testator for him to live his natural life and to make payments for his livelihood, and then the testator will make a Will in favour of the defendant. This arrangement is reflected in the 2009 Will itself at paras 5 and 6, which reads:

"...

5. I have two (2) daughters REHANA RAHEEN BANU of Vancouver, Canada and RUKSANA RAHEEN BANU of Lautoka. I make no provision in my Will in respect of my daughter REHANA RAHEEN BANU as she has no intention of returning to live in Fiji. I make no provision in my Will in respect of my daughter RUKSANA RAHEEN BANU as she already has a one third share in the property I jointly own with her and my wife Saira Banu. I make no provision in my Will in respect of my wife SAIRA BANU as we live our own separate lives and she already has a one third share in the property jointly owned by my wife, my daughter Ruksana Raheen Banu and I.

6. I have given devise and bequeath all my real and personal property to my son in law GARY JACKSON CARTER as he has paid for the improvements and extension of the house at 18 Corbert Street, Drasa Vitogo, Lautoka land known as Lot 34 on DP 4333 containing an area of 18.1 perches more particularly comprised in Housing Authority Sub Lease No. 301799. Gary Jackson Cater has shown and continues to show affection and respect notwithstanding he and his wife my daughter Ruksana Raheen Banu have parted. (Emphasis supplied)

..."

- [29] The 2009 will specifically alters the testator's previous Will. Para 7 of the 2009 Will states:

"7. I have altered the provisions of my last Will made in the office of Messrs Krishna & Company wherein my beneficiaries were my wife Saira Banu and my daughter Ruksana Raheen Banu."

- [30] Further, the defendant in a letter dated 15 February 2006 written to the plaintiff's solicitors, Messrs Chaudhary & Associates in response to the letter sent to him by the plaintiff's solicitor asking the return of the probate obtained based on the 2009 will (PBoD-10) had also explained why the testator made a Will in his favour. The letter reads:

"15 February 2016

*Chaudhary & Associates Barristers and Solicitors
PO Box 1011
Lautoka
Fiji.*

Dear Sir,

Re: Estate of Abdul Gaffar Your letter of 25/01/2016 refers

Firstly,

Probate No. 57599 granted on 12 November 2015 was so granted after all legal requirements and procedures had been complied with, including advertisement in the Fiji Times.

Brief background,

In the first years of my marriage to Rukshana I spent many thousands of dollars and hundreds of physical man hours on home improvements, extensions and renovations to the property at Corbett street, including a bure style self-contained studio apartment for rental income, and a portable self-contained sleep-out unit for her father (Gaffar) as the parents had been living separately for many years and Rukshana did not want him in the main house with us. At one time Rukshana mooted the idea that my name should be added to the title but I did not consider it necessary at that time.

In 2009 my marriage to Rukshana was on the rocks and she gave me an ultimatum to move out of the house but would not agree to any form of compensation or reimbursement for the time and money I had put into the property.

Gaffar was extremely upset at this turn of events. He was treated like an outcast by wife and daughter most of the time and was not even allowed to eat his meals in the house. He had always relied on me for financial support during the whole time of our marriage and did not know what would happen to him if I left. He also acknowledged and appreciated the substantial works and contribution I had made to the property.

In November 2009 when the situation had become totally untenable and I was making arrangements to move out Gaffar approached me and proposed that if I would agree to leave behind and let him continue to live in the portable sleep-out, and support him financially for the rest of his life, he would make a will leaving me his share of the property so that I would at some stage get something back for what I had done. The only condition he insisted on was that I would never do anything to force a sale of the property while his ex-wife was still alive and wanted to carry on living there, if he pre-deceased her.

He subsequently did make a will and gave me a sealed copy which I opened the morning after his death. It was only then that I knew he had also made me his Sole Executor.

.....
There is nothing sinister (to quote your term) about this will as the deceased left his share to his then son-in-law in appreciation for past considerations and

benefits and in anticipation of continued free accommodation and a monthly cash allowance for the rest of his natural life time, which he so did.

It has always been my assumption that if Gaffar passed away first, Rukshana and her elder sister would possibly want to have their mother go to live with one or other of them in Canada or USA and I have recently been told by a family friend that in fact, that is being planned for as early as March/April this year, as soon as the house can be sold.

If that is the case, I could think of nothing nicer for Ma than to spend her last years with daughters and grandchildren, and I am willing to co-operate to see that happen.

I am not however willing to surrender probate as you suggest. I will co-operate in the sale of the property at fair market value as long as one third of the sale proceeds is paid to me.

Please consult with your client and respond at your earliest convenience.

Yours sincerely

*Gary J. Carter
Justice of the Peace
Commissioner for Oaths – Fiji"*

- [31] The above letter succinctly explains the background in which the 2009 Will was made in favour of the defendant. In his Will, the testator gives the reason why he is not making provision in the Will for his wife and his daughter. The defendant also stated this background in his evidence and confirmed the contents of the letter he had written to the plaintiff's solicitors.
- [32] The defendant stated in his evidence that he was sending allowances to his then father in law on a monthly/fortnightly basis for the rest of his natural life time. He said: *"The last payment I send him was, I think, two months before he died."* He produced copies of Western Union receipts and Lotus Foreign Exchange receipts to confirm payments to his then father in law from June 2011, the year he left Fiji till June 2015 (DE/4 which consists of 29 copies of such receipts). He further said: *"He (Gaffar) told me that he made the Will, he gave me a copy in a sealed envelope which I opened on a morning after I was advised of his passing."*

[33] The defendant was consistent in his evidence. He was coherent and calm and answered the cross-examination question without any hesitation. I have no hesitation whatsoever to find him as a credible witness. Therefore, I accept his evidence.

The subsequent will

[34] The plaintiff attempts to propound the subsequent will allegedly executed by the testator in favour of his wife, the plaintiff and his daughter, Ruksana Banu.

[35] A Will must be in writing and it must be signed by the testator or by some person in his or her presence and such signature is made or acknowledged by the testator in the presence of at least 2 witnesses present at the same time (WIL 6).

[36] The plaintiff relies on the subsequent Will. Therefore, she bears a duty to prove its due execution.

[37] The subsequent Will has been executed in the presence of 2 witnesses namely Pravin Narayan Gosai (PW1) and Ms Roshni Devi (Devi). PW1 said that Gaffar signed the subsequent/the 2014 Will in his presence and in the presence of the other witness (Devi) and Saira Banu, the plaintiff. The plaintiff is one of the beneficiaries as well as executrix under the 2014 Will.

[38] The plaintiff opted to not give evidence albeit she was present in court on the day when the trial commence. His counsel, without specifying the nature of her medical condition and without any medical report, informed the court that he is not calling the plaintiff to give evidence as she is sick. In this regards, I agree with Ms Khan of counsel for the defendant that the plaintiff was able to attend court and not in a state that she was unable to give evidence; and she chose not to give evidence as she arguably did not want to lie under oath.

[39] The defendant challenged the subsequent Will. In the statement of defence, the defendant states that the second pretended Will purportedly made bearing the date 24 January 2014 is a forgery and that signature of the deceased is not his true and proper signature (see para 2 of the statement of defence).

[40] Even though the 2014 Will was seriously challenged by the defendant on the basis that the signature appears therein was not that of the testator, the plaintiff only called Gosai, one of the attesting witnesses. She did not even call the second attesting witness Devi. Most surprisingly, she herself decided not to give evidence albeit she was present at the time when Gaffar signed the alleged 2014 Will on the pretext of illness.

The plaintiff failed to call the other attesting witness

[41] Roshni was the second attesting witness of the 2014 Will. There is no evidence that the plaintiff was unable to locate or was not available to give evidence. The plaintiff had the burden to call the second attesting witness because the alleged 2014 Will was put in dispute that the signature appears on it is not the genuine signature of the testator.

[42] In *Ram's*, above, the Fiji Court of Appeal said [at para 55]:

"[55] It was the burden of the 1st Respondent for it was the 1st Respondent who had put in issue the validity of the Will dated 28th December, 1995. The 1st Respondent failed to do that and in my view which ought to have been held against him on the principle that, where evidence is required by law to be adduced by a party, upon such failure, the presumption that ought to be drawn is that if such evidence had been adduced it would have been adverse to such party."

[43] The plaintiff had the burden to establish the validity of the 2014 Will. She failed to discharge that burden. She ought to have called Roshni to support her claim, for her evidence was desperately needed. In the circumstances, the court may infer that Roshni was not called to give evidence because her evidence would have been adverse to the plaintiff if her evidence had been adduced.

The findings

[44] The following factors lead me to an inevitable conclusion that the signature that appears on the alleged 2014 Will is not the genuine signature of the testator (Gaffar):

- a) The plaintiff claimed that the alleged 2014 Will was the testator's last Will, however she had failed to prove that the testator actually signed the Will.
- b) The plaintiff herself chose not to give evidence although she was present at the time when the alleged Will was signed by the testator without sufficient reasons.
- c) The plaintiff failed to call Roshni, the second attesting witness of the impugned Will. No reasons were adduced for not calling her to give evidence in support of the plaintiff's claim. This leads to the inference that she would have given adverse evidence to the plaintiff if she had been called to give evidence.
- d) PW 1 was an unreliable witness. He gave inconsistent evidence. He was unable to produce in court the written instructions given by Gaffar to prepare a Will. He could not also produce the relevant office file maintained in respect of the alleged Will. He said the plaintiff paid \$100.00 for making the Will, but the receipt has been issued in Gaffar's name. He was unable to explain this. He produced his office attendance register. The court's attention was drawn to the entries on 24 January 2014, the date on which the alleged Will was executed. PW1's evidence was that the plaintiff and her husband, Gaffar came together to make a will that day, whereas the entries in the attendance register demonstrate that both of them had come at different times, plaintiff at 10.30 am and Gaffar at 11.30 am. It is to be noted that Gaffar's attendance at 11.30 am has been recorded as the first

attendee for the day just before the next attendance which was at 9.50 am. Gaffar's attendance has been interpolated with the different handwriting. He (PW1) also produced the purported last Will of Gaffar (PE-5) and the purported Will is different from the one that was disclosed to the defence. Both, the original and the copy bear different signatures, the font and spacing are also different. PW1 could not explain these discrepancies. When suggested by the defence counsel that the signature on the purported 2014 Will was not the signature of the testator, PW1 smilingly said he (Gaffar) signed it.

- e) Expert witness, Maran called by the defendant had produced his report and opinion based on the signature on Gaffar's 2009 Will and Gaffar's signature on the alleged 2014 Will. He also compared Gaffar's contemporary signature with his 2015 signature. His finding and opinion in the report state that based on the sample signatures made available to him, he has determined that "Abdul Gaffar probably did not sign the signature attributed on Q1"

Conclusion

[45] On the evidence adduced before me, I conclude that the plaintiff had failed to establish, on the balance of probability, that the signature that appears on the subsequent Will dated 24 January 2014 is the genuine signature of the testator, Gaffar. I accordingly declare that the subsequent Will is not a valid Will of Gaffar. I would therefore dismiss the plaintiff claim with costs, which I summarily assess at \$3000.00. It follows that the Will dated 25 November 2009 is the valid last Will of Abdul Gaffar, and the probate No. 57599 obtained based on that Will is lawful.

The outcome

1. Plaintiff's claim is dismissed.

2. The Will dated 25 November 2009 is the valid last Will of Abdul Gaffar and the probate No. 57599 obtained on 12 November 2015 based on that Will is lawful.
3. The plaintiff will pay summarily assessed costs of \$3000.00 to the defendant.

M.H. Mohamed Ajmeer
19/9/18

.....
M.H. Mohamed Ajmeer
JUDGE

At Lautoka
19 September 2018



Solicitors:

For the plaintiff: M/s Chaudhary & Associates, Solicitors

For the defendant: M/s Natasha Khan Associates, Barristers & Solicitors