



CARIBBEAN COURT OF JUSTICE

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MEDIA RELEASE

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CCJ UPHOLDS THE VALIDITY OF DISPUTED GUYANESE WILL

Port of Spain, Trinidad and Tobago. Today, the Caribbean Court of Justice (CCJ) delivered its judgment in the Guyanese case of *Sasedai Kumarie Persaud v Sherene Mongroo, Zenobia Rosenberg and Indranie Mulchand* [2023]CCJ 16 (AJ) GY, setting aside the decision of the Court of Appeal and restoring the judgment of the High Court.

In this appeal, Yusuf Mongroo, a Guyanese businessman, made a will in which he appointed his business manager, Sasedai Persaud, as executor, and made her the principal beneficiary. His common-law wife, Indranie Mulchand, also benefitted under the will. The will was made a few days before his death and was challenged by his daughters, Sherene Mongroo and Zenobia Rosenberg, who did not receive any benefit under the will.

In the High Court, the trial judge found that the will of Mr Mongroo was valid and effective, and approved for probate purposes, the copy of the will was put into evidence during the trial. On appeal to the Court of Appeal, the decision of the trial judge was reversed and the will was held to be invalid and ineffective. Sasedai Persaud appealed to the CCJ.

In a judgment authored by Justice Rajnauth-Lee, the CCJ first considered whether conflicting opinions delivered in the Court of Appeal, on certain issues, resulted in a defective judgment on those issues, that should be set aside. The CCJ underscored that in its Appellate Jurisdiction, it is a superior court of record with such jurisdiction and powers as are conferred on it by the Agreement Establishing the Caribbean Court of Justice, the Constitution or any other law of the Contracting Party. Accordingly, the CCJ noted that it was empowered in an appeal from Guyana to ensure the determination on the merits of the real question in controversy between the parties. For that reason, the CCJ did not agree with the submission that the conflicting opinions of the Court of Appeal resulted in a defective judgment that ought to be set aside. The CCJ was, therefore, able to hear the case on its merits and proceeded to do so.

Additionally, before embarking on the issues which largely concerned findings of fact made by the trial judge, the CCJ explained that where a trial judge had properly utilised the distinct advantage of having seen and heard the witnesses, had adequately evaluated the witnesses, and weighed the facts and circumstances of the case, an appellate court ought not to lightly reverse findings of credibility arrived at by the trial judge.

On the issue of whether Mr Mongroo had the required testamentary capacity, the CCJ found that there were no circumstances that should have aroused the suspicion of the trial judge in this case. In particular, the CCJ noted that the trial judge accepted the evidence of Mr Vidyanand Persaud, Attorney-at-Law who prepared the will, and of Dr Rohan Jabour, a medical doctor, who was one of the witnesses to the will. The trial judge also found that the daughters had not established that they enjoyed a close relationship with their father. The CCJ, therefore, held that the evidence accepted by the trial judge provided a sufficient basis on which she could have found that Mr Mungroo had the requisite testamentary capacity.

Concerning certain formality requirements in section 4 of the Wills Act, the CCJ observed that the will was not signed in the presence of the witnesses, as stated in the attestation clause, that part of a will that has the signature of the person making the will and the witnesses., Consequently, the presumption of due execution could not be applied. However, the Court was of the view that having regard to the evidence accepted by the trial judge, and in particular, the evidence of Dr Jabour, the trial judge's finding that Mr Mongroo acknowledged his signature on the will in the presence of both witnesses, who signed in his presence, and of each other, could not be faulted. The Court, therefore, held that due execution of the will had been established.

The CCJ concluded that the trial judge considered the evidence of the two expert witnesses who examined the will. Therefore, the Court found that the trial judge was correct to find that the signature on the will was that of Mr Mongroo.

The matter was heard by the Honourable Mr. Justice Adrian Saunders, President and the Honourable Justices Jacob Wit, Maureen Rajnauth-Lee, Andrew Burgess and Peter Jamadar.

Hari Ramkarran SC, Nikhil Ramkarran and Kamal Ramkarran appeared for the Appellant. Shaunella Glen, Tamara Khan and Paula Jones-Nicholson appeared for the First Respondent. C. A. Nigel Hughes, Savannah Barnwell, Sophia Findlay, Edrianna Stephen and Michael Jagnanan appeared for the Second Respondent. C. V. Satram, Mahendra Satram and Ron Motilall appeared for the Third Respondent.

The full judgment of the Court is available on the CCJ's website at www.ccj.org.

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About the Caribbean Court of Justice:

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Saint Lucia and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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