

SOUTH AFRICA / JUDGMENT

Patricia Shelly Hoste N.O and Another v Karen Lotter N.O and Others (3710/2015) [2018] ZAECGHC 77 (10 May 2018)

[2018] ZAECGHC 77

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Pickering

CASE / FILE NUMBER

3710/2015

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

Case no: 3710/2015

NOT REPORTABLE

Date heard: 2 May 2018

Date delivered: 10 May 2018

In the matter between

PATRICIA SHELLY HOSTE (formerly Malkoff)

N.O. (in her capacity as trustee for the time being

of the Jordana Beth Trust)

First Plaintiff

DEBORAH ANNE HOTZ N.O.

(in her capacity as trustee for the time being of the Jordana

Beth Trust)

Second Plaintiff

And

KAREN LOTTER N.O.

(in her capacity as the Appointed Executrix in the Estate of the late

Stuart Bruce Doveton Helps)

First Defendant

DIRK STOFFBERG

Second Defendant

GORDON GARY STOFFBERG

Third Defendant

GIRLS AND BOYS TOWN SA

Fourth Defendant

SALVATION ARMY

Fifth Defendant

THE SOCIETY FOR THE PREVENTION OF

CRUELTY TO ANIMALS - EAST LONDON

Sixth Defendant

SAINT BERNARDS CHURCH

Seventh Defendant

SOUTH AFRICAN AIR FORCE ASSOCIATION

Eight Defendant

DURBAN HIGH SCHOOL

Ninth Defendant

WANDERERS CRICKET CLUB

Tenth Defendant

CHRISTINE GALE ODENDAAL

Eleventh Defendant

MERLE WILLIAMSON

Twelfth Defendant

DEBRA JENNINGS

Thirteenth Defendant

JORDANA MALKOFF

Fourteenth Defendant

SAINT DOMINICS HOSPICE

Fifteenth Defendant

BETTINA VAN NIEWENHUIZEN

Sixteenth Defendant

THE MASTER OF THE HIGH COURT,

GRAHAMSTOWN

Seventeenth Defendant

24 SQUADRON, JOHANNESBURG

Eighteenth Defendant

JUDGMENT

PICKERING J:

[1] Mr. Stuart Bruce Doveton Helps ("the deceased") passed away during 2014 at the age of approximately 90 years. After his death the Master of the High Court received, in total, six wills purporting to have been validly executed at various times by the deceased. The sixth and last such will (Will 6) dated 25 March 2012 was accepted by the Master in terms of section 8(3) of the Administration of Estates Act 66 of 1965 as deceased's valid Last Will and Testament. In accepting this will as valid the Master reported:

"A will that is regular on the face of it is presumed to be valid unless it is declared invalid and the onus of proving its invalidity is on the person who challenges it. *Rapson v Putterill* 1913 AD 417; *Kunz v Swart* 1924 AD 618 and *Regea v Godart* 1939 AD 16 refers. The Honourable Court is also respectfully referred to *Naidoo NO v Crowhurst NO* (2012) 2 All SA 379 (WCC) and *Diehl v The Master* (2008) 4 All SA 430 (T) regarding the burden of proof.

The will dated 25 March 2012 was registered and accepted by me on 25 August 2014 in terms of Section 8(3) of the Administration of Estates Act 66 of 1965."

[2] Thereafter, during 2015, first plaintiff in her capacity as Trustee for the time being of the Jordana Beth Trust together with second plaintiff also in her capacity as a Trustee of the Jordan a Beth Trust instituted the present action in which they seek, inter alia, an order that Will 6 be declared to be invalid and that a will signed by the deceased on 3 December 2010 (Will 2) be declared to be deceased's Last Will and Testament. The various beneficiaries named in Will 6 are cited by plaintiffs as defendants. It is not necessary to detail all the defendants. Of these beneficiaries only Mr. Dirk Stoffberg, who was cited as second defendant, entered an appearance to defend the action. First defendant, Karen Lotter, was

cited in her capacity as the duly appointed Executrix in the deceased's estate.

- [3] In their particulars of claim as amended the plaintiffs raised various issues relating to the alleged non-compliance with the formalities of the Wills Act 7 of 1953. They alleged further:

"36A The wills are further invalid and should be set aside because they do not express the true will or wishes of the deceased due to the following 36A(1) Second defendant, Lesley Stoffberg and/or persons unknown

to the plaintiffs induced the deceased by fraud to believe that the wills contained a provision that he bequeaths his Kalinka Garden Home to the Jordana-Beth Trust while in fact the wills contained a provision that he bequeaths his Kalinka Garden Home to second defendant; and/or

36A(2)

Second defendant, Lesley Stoffberg, and/or persons unknown to the plaintiffs fraudulently represented to the seventeenth defendant that the deceased signed the wills in the presence of two witnesses and that the two witnesses signed the wills in the presence of each other and the deceased, whilst this was not in fact true."

- [4] In his original plea second defendant denied that any of the wills were invalid as alleged. In his consequentially amended plea to plaintiff's amended particulars of claim second defendant admitted "on the basis of the opinions expressed in the summary of the expert evidence of Ms. Palm" that certain of the wills, excluding the final will, namely Will 6, were invalid. He pleaded that Will 6 "was signed in accordance with the requirements of the Wills Act by the testator in the presence of two witnesses and by the witnesses themselves and represents the deceased's Last Will."
- [5] It is common cause that the most valuable asset in deceased's estate is an immovable property situate in Gonubie, East London, and named in the respective Wills as Kalinka Garden Home.
- [6] The various Wills in their chronological order according to the dates on which each Will was purportedly executed are as follows:

Will 1 - 24 December 2007

Will 2 - 3 December 2010

Will 3 - 2 August 2011

Will 4 - 10 February 2012

Will 5- 14 March 2012

Will 6 - 25 March 2012

- [7] In Will 1 the Kalinka Garden property was bequeathed to the aforesaid Patricia Hoste in her personal capacity. In Will 2 the said property was bequeathed to the aforementioned Jordana Beth Trust. In Wills 3, 4, 5 and 6 the said property was bequeathed to second defendant.
- [8] Deceased was married three times. After his marriage to his last wife, Maureen, he moved to East London, more specifically to Gonubie, where he resided with her at the Kalinka Garden property. He had no children from any of his marriages. Maureen, however, had four children, including second defendant, he accordingly being deceased's stepson. Second defendant is married to the aforementioned Lesley Stoffberg who at all material times was employed by Sanlam Trust in East London as a so-called "intermediary", apparently tasked with preparing wills on behalf of testators and submitting them to the head office of Sanlam Trust in Cape Town for onward transmission to the Master of the High Court in the event of the death of a testator.
- [9] In her testimony Mrs. Hoste stated that deceased who regarded her and her daughter, she was extremely close to Jordana, as a daughter and granddaughter respectively. Before deceased moved to Gonubie she had regular contact with him in Johannesburg. During 2006 deceased and Maureen experienced marital problems and Maureen left Gonubie and moved to Johannesburg. After they separated deceased stayed with Mrs. Hoste, her mother and her daughter in Johannesburg. He was very distressed at the separation more especially because he was married to Maureen in community of property and was concerned about his financial affairs in the event of a divorce. Maureen was then diagnosed with terminal cancer during 2007 and she moved back to Gonubie to stay with deceased. She died during July 2007. Deceased then stayed with Mrs. Hoste and her mother in Johannesburg for some three months. At that time he told Mrs. Hoste that he wanted her to inherit the Kalinka Garden property. His intention in this regard was duly reflected in Will 1 signed on 24 December 2007.
- [10] According to Mrs. Hoste her catering business ran into difficulty during 2008. She discussed her problems with deceased during January 2009. He offered her financial assistance. During the course of various discussions he told her that he was concerned that her assets might be seized by her creditors. He was concerned also that should he die the creditors would seize the Kalinka Garden property which he had left to her. He accordingly advised her that he wanted to change the bequest of the property to a Trust of which she and her daughter would be beneficiaries. It was agreed between Mrs. Hoste and deceased that she should be substituted as beneficiary by the Jordana Beth Trust as is indeed reflected on Will 2 dated 3 December 2010.

- [11] It is common cause that deceased slipped and fell in the shower during October 2011 and was hospitalised in a critical condition. He survived, however, and was admitted to frail care for a time. At about this time Mrs. Hoste left to take up residence in Australia. Deceased again fell during January 2012 and was once again hospitalised followed by a time in frail care.
- [12] Mrs. Hoste next saw deceased during December 2013 when she came to South Africa for her daughter's wedding. Deceased was not well enough to travel to Cape Town for the wedding but Mrs. Hoste visited him thereafter at Gonubie. He was then very frail and had a live-in nurse, Ms. Odendaal. It was difficult to have a discussion with him but when Mrs. Hoste left deceased was very upset and told her that "the house is yours."
- [13] Ms. Van Nieuwenhuizen knew deceased for fourteen years. Before leaving to live in Germany she worked at Gonubie Pharmacy where she had first met deceased. She and deceased established a routine of having lunch together on every day of the week, during which time they had lengthy conversations about all manner of things including the disposition of his assets after his death. He told Ms. Van Nieuwenhuizen that he had left his Kalinka Garden property to the Trust. According to Ms. Van Nieuwenhuizen the deceased loved Mrs. Hoste and Jordana as if they were his daughter and granddaughter.
- [14] Deceased told Ms. van Nieuwenhuizen that Maureen and her daughters wanted him to sell the house and move to Johannesburg but that he did not want to do so as his entire social life revolved around Gonubie. After deceased had slipped and fallen Ms. Van Nieuwenhuizen was given a lift by Mrs. Stoffberg to visit him in hospital. Whilst on the way there Mrs. Hoste phoned and Mrs. Stoffberg spoke to her. Ms. Van Nieuwenhuizen could not hear what was said but after the call ended Mrs. Stoffberg told her that Mrs. Hoste thought that deceased was dying and wanted to come and visit him but added "over my dead body will Patricia get a single cent."
- [15] Ms. Van Nieuwenhuizen stated that she visited the deceased again in hospital in November 2011, this being subsequent to the purported execution of Will 3, when he reiterated in the course of the conversation that Mrs. Hoste and Jordana would get the house. Ms. Van Nieuwenhuizen then left for Germany on 28 February 2012.
- [16] Plaintiff also adduced the evidence of Ms. Palm, a highly qualified and experienced handwriting expert. She expressed the opinion that the signatures of deceased on Wills 1, 2, 3, 5 and 6 were genuine. With regard to Will 4 she stated that the signature was in fact a photocopy of the signature on Will 3. I will return to this hereunder.
- [17] With regard to Will 6 she stated that whilst all the signatures of deceased thereon were genuine the signatures on pages 1 and 3 thereon were very erratically written, a so-called ataxic type of signature, whereas the signature on page 2 thereof was very good. She stated that she would have expected an extremely bad signature such as that on page 1 to have progressed to an even worse signature on page 2 and a "terrible" signature on page 3. Having regard to various specimens of deceased's signature she was of the opinion that the

signature on pages 1 and 3 were written by deceased at the same time but that the signature on page 2 was appended at some other time and that, contrary to what was put to her under cross-examination concerning the simultaneous signing by deceased of all the pages, there must have been a lengthy delay between the signing by deceased of pages 1 and 2 and the signing by him of page 2.

- [18] She fairly conceded under cross-examination, however, that were acceptable evidence to be adduced by second defendant to the effect that the signatures were affixed on the will at the same sitting, her opinion would be "displaced", although she would still question why the signature on page 2 was so "fundamentally different" to those on pages 1 and 3.
- [19] Second defendant called one witness in respect of Will 6, namely Mr. Corith Greene. He called no witnesses with regard to the execution of Wills 3, 4 and 5. Mr. de la Harpe, who appeared for second defendant, submitted that the evidence relating to the validity of these wills was irrelevant to a determination of the validity of Will 6, with which the previous wills had nothing to do. Mr. Grobbelaar, who appeared for plaintiff, submitted to the contrary that the circumstances under which Wills 3, 4 and 5 were purportedly executed had everything to do therewith. Given the nature of Mr. Grobbelaar's submissions it is, in my view, necessary to deal with the evidence concerning Wills 3, 4 and 5.
- [20] With this general background I turn then to consider the evidence relating to the execution of the specific wills, namely Wills 3 to 6.

WILL3

- [21] There were two witnesses to this will, namely Candice Stoffberg, the daughter of Lesley and Dirk Stoffberg, and Briony Norton. Candice Stoffberg did not testify but the evidence of Briony Norton was adduced by plaintiffs. She stated that during 2011 she was in the employ of Sanlam Trust as a financial advisor at its offices in Vincent, East London. She knew Mrs. Stoffberg who worked in the same office as a financial advisor and intermediary. As an intermediary Mrs. Stoffberg would obtain the necessary information from a prospective testator in order to draft a will for submission to the head offices of Sanlam Trust in Cape Town. She testified that an intermediary would take instructions from the testator and submit it to head office where it would be prepared and returned to the intermediary for signature by the testator. She recollected that Mrs. Stoffberg had asked her and Candice Stoffberg to sign as witnesses to deceased's will. She appended her signature to Will 3 although at the time deceased was not present. She recalled Mrs. Stoffberg telling her that deceased was not well and could not come in to sign the document. She could not remember whether Candice Stoffberg was present at the time that she signed the document nor could she remember whether deceased's signature was already on the will. She admitted that she knew what she was doing was wrong and contrary to the provisions of the Wills Act.

[22] Ms. Charmelia Jina was employed by Sanlam as a sales support assistant. She stated that she was asked by Mrs. Stoffberg to sign as a witness to this will. The other witness Esther Botha, was present.

Deceased, however, was not present when she and Botha signed the will. She did not notice whether his signature was already on the will. She stated that the procedure of signing as a witness in the absence of the testator was not an uncommon occurrence. Despite knowing that it was wrong she "just trusted the intermediary."

[23] As stated above the handwriting expert, Ms. Yvette Palm, testified in respect of all the wills. Her evidence with regard to Will 4, which evidence was not in any way disputed by second defendant, was that whilst the signatures of the two witnesses, Botha and Jina, had been written in "wet ink", the signature of the deceased was "toner based" and was in fact a photocopy of deceased's signature which appeared on Will 3. She stated that in her opinion therefore the deceased's signature had obviously been photocopied first and thereafter the pages of the will signed in wet ink by the witnesses. The will was therefore, in her opinion, a deliberate fabrication.

WILL5

[24] The aforementioned Ms. Norton was also a witness to deceased's purported signature on this will. She stated that in respect of this will as well she was requested by Mrs. Stoffberg to sign as a witness. Deceased was not present when she signed it.

WILL6

[25] With respect to Will 6 Mr. Greene stated that in 2012 he was dating Candice, the daughter of Lesley and Dirk Stoffberg and had met deceased in Gonubie at the Stoffberg home. On Sunday, 25 March 2012, he was at the Stoffberg home together with other family members when deceased arrived for Sunday lunch. He stated that the deceased would visit the Stoffberg home approximately once a week.

[26] After lunch Mrs. Stoffberg asked Mr. Greene and one van der Walt if they would sign as witnesses to deceased's will. He had not known until then that deceased was intending to sign a will. They agreed. Mrs. Stoffberg went to fetch the Will. There was, as far as he could recall, no discussion about the matter. He, deceased, Mrs. Stoffberg and van der Walt went into the dining room while the other members of the group remained outside. Deceased took a seat at the head of the table. Mrs. Stoffberg stood behind him to the left. Mr. Greene stood somewhat to the right. According to him Mrs. Stoffberg read out the

first page of the will. Mr. Greene did not know why she read it. Thereafter deceased read the will himself. After he had read each

page he signed it and it was then signed by Mr. Greene and van der Walt. The same procedure was repeated in respect of pages two and three of the will.

[27] Second defendant then closed his case without calling any further witnesses.

[28] The formalities required in the execution of a will are set out in s 2(1) of the Wills Act. The relevant parts thereof read as follows:

"(a) no will executed on or after the first day of January, 1954, shall be valid unless –

(i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person,

also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other

person, in the presence also of such other person, and

(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or

by such other person anywhere on the page; and..."

[29] It is not in dispute, as was stated by the Master, that Will 6 is complete and regular on the face of it. This being so the will is presumed to be valid until its invalidity has been established. The onus is on the person alleging invalidity to prove such an allegation. See: Corbett. Hofmeyr and Kahn: The Law of Succession in South Africa 2nd Ed at 89 and the cases cited therein at footnote 12. As was stated in *Bowes v Friedlander N.O. and Others* 1982 (2) SA 504 (C) at 509 C - E, no higher degree of proof is required than that which is required in any other case of a civil nature but the presumption of validity has to be rebutted by the plaintiff before the will can be declared invalid. See too in this regard *Kunz v Swart and Others* 1924 AD 618.

[30] It is trite that a will which is executed as a result of fraud, duress and/or undue influence is invalid. *Spies v Smith* 1957

(1) SA 539 (A). As was stated in *Spies v Smith* supra at 546 A - C, flattery, adulation, professions of extraordinary love or respect, a direct request or accusations against intended heirs do not constitute undue influence. With regard to fraud *Kannemeyer JP* stated as follows in *Gilbey Distillers and Vintners (Pty) Ltd and Others v Morris N.O. and Another* 1990 (2) SA 217 (SECLD) at 225 J

- 226 A:

"The onus of proving fraud is on the applicants. Although the onus is the ordinary civil one i.e. one that must be discharged on a balance of probabilities, one must bear in mind that fraud will not lightly be inferred: *Gates v Gates* 1939 AD 150 at 155.

[31] In *Gates v Gates* supra it was stated that the requirement in such cases is still the normal standard of proof but that "the reasonable mind is not so easily convinced in such cases because there are moral and legal sanctions against immoral and

criminal conduct and consequently the probabilities against such conduct are stronger than they are against conduct which is not

immoral or criminal."

[32] It is clear from the undisputed evidence adduced by plaintiff that Wills 3, 4 and 5 are invalid as was eventually admitted by second defendant. In this regard Mr. Grobbelaar submitted that it was clear

that Mrs. Stoffberg acted fraudulently with regard to the execution of Wills 3, 4 and 5. In my view this submission is entirely

justified. She is a duly appointed intermediary in whom Sanlam Trust has obviously reposed its trust. She could not but have been aware of the formalities required by the Wills Act and in particular the requirement that the testator and the two competent witnesses must sign the will together and in one another's presence. Indeed, all three wills have attached to them a page specifying these requirements. Despite this she requested the purported witnesses to the wills to sign them in the absence of the testator. It was suggested by Mr. de la Harpe that in so doing she had merely flouted the requisite formalities without any fraudulent intent. In my view, however, her conduct must be viewed in the context of her conduct with regard to Will 4.

[33] As appears from what I have set out above the evidence of Ms. Palm establishes that Mrs. Stoffberg must have photocopied deceased's signature on Will 3, transposed it to Will 4, and then arranged for the witnesses to sign and attest to that signature in the absence of deceased. This conduct, absent any explanation from Mrs. Stoffberg, is nothing else but a calculated act of fraud on her part and casts a completely different light on her conduct in relation to Wills 3 and

5. Had deceased died immediately after the purported execution of Will 4 that will would have been presented to the Master despite Mrs. Stoffberg and the witnesses knowing that it was in fact a fraudulent document. That conduct must also be seen in the context of Mrs. Stoffberg's husband being named therein as the main beneficiary.

[34] The conduct of Mrs. Stoffberg in relation to Wills 3, 4 and 5 was utterly dishonest and deserving of the strongest censure. I can take judicial notice of the fact that Sanlam Trust is a very well-known

and reputable organisation in which, no doubt, many members of the public repose their trust in relation to their own wills and the wills of their relatives. It is disturbing that employees thereof could have acted in the manner they did. Something is very wrong, if not rotten, in the Vincent Office of Sanlam Trust. I intend requesting the Registrar of this Court to forward a copy of this judgment to the Head Office of Sanlam Trust for their attention and action.

[35] In light of this Mr. Grobbelaar submitted that in considering whether

the plaintiffs have discharged the onus of proving Will 6 invalid it was imperative that Will 6 not be considered in isolation. Will 6 was, in effect, so he submitted, the end product of a fraudulent process which commenced with Will 3.

[36] It is so that Mrs. Stoffberg's conduct in relation to the execution

of Wills 3, 4 and 5 has cast a heavy pall of suspicion over the validity of Will 6, more especially when the uncontested evidence of Mrs. Hoste was to the effect that as late as December 2013 deceased reiterated that she would inherit the property, as well as the uncontested evidence of Ms. Van Nieuwenhuizen that Mrs. Stoffberg told her that over her dead body would Mrs. Hoste inherit a cent.

[37] Mr. Grobbelaar submitted that an inference adverse to second defendant should be drawn arising out of his failure to call Mrs. Stoffberg as a witness to refute not only the allegations of fraud but also to explain the extremely suspicious circumstance that it was only after her appearance on the scene as an intermediary in respect of Will 3 that the bequest of the property was changed in favour of second defendant. He submitted that all the circumstances called for an answer by Mrs. Stoffberg and an explanation as to why deceased had changed the beneficiary and that in the absence thereof it was justifiable to draw an inference of fraud with regard to the execution of Will 6. In the leading case of *Elgin Fireclays Ltd v Webb* 1947 (4) SA 744 (AD) it was held that where a witness who is available and able to elucidate the facts is not called by a party such failure "leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him."

[38] Mr. de la Harpe submitted, however, that in light of the incidence of

the onus and the presumption of validity there was no evidentiary burden on second defendant to call Mrs. Stoffberg where there was the direct evidence of Mr. Greene concerning the signing by deceased of Will 6 which evidence, so he submitted, establishes independently of any evidence which Mrs. Stoffberg might have adduced that Will 6 was validly executed. He submitted that the evidence of Mrs. Hoste and Ms. Van Nieuwenhuizen concerning the expressed intention of the deceased to leave the property to Mrs. Hoste and later to the Trust of which she and her daughter were beneficiaries was irrelevant. He submitted that it did not establish any facts to support the plaintiffs' pleaded case in relation to Will 6, namely, that a fraud was perpetrated by either Mrs. Stoffberg, or second defendant, or by anyone else, or that deceased, when he signed the will dated 25 March 2012, believed that he was leaving his home to the Trust when, in fact, he was leaving it to second defendant. He submitted that the pleaded averment

that the deceased was fraudulently misled into believing that he was leaving his home to the Trust was founded upon nothing more than suspicion and speculation and that it was also irreconcilable with the evidence of Mr. Greene to the effect that the deceased had read each page of the will before he signed it. He pointed out that Mrs. Stoffberg and the second witness to the signing of the will, van der Walt, were both available to plaintiff had they wished to call them.

[39] In my view Mr. de la Harpe's submissions in this regard must be upheld, despite the pall of suspicion cast over the execution of Will 6 by Mrs. Stoffberg's previous fraudulent conduct. I must be satisfied on the basis of the above cited authorities that deceased was induced by fraud as alleged in the particulars of claim. In this regard the evidence of Mr. Greene is, in my view, decisive of the matter. He was described by Mr. Grobbelaar as being an unconvincing witness, whose evidence was in certain respects improbable. Whilst I would not describe Mr. Greene as the "exemplary" witness which Mr. de la Harpe described him as being, he was not a bad witness and there is, in my view, no basis on which his evidence can be rejected as unreliable or untruthful. He was cross-examined exhaustively by Mr. Grobbelaar as to the circumstances in which Will 6 came to be signed by deceased and he withstood such cross-examination relatively well. It is so that there were certain

improbable aspects of his evidence. It seems improbable, for instance, that Mrs. Stoffberg would have read the will aloud in the

presence of witnesses and no reason comes to mind as to why she should have done so. Furthermore, in all the wills, 3 to 6, Mrs.

Haste's daughter Jordana, is referred to as being deceased's stepdaughter. Mr. Grobbelaar submitted that these were strong indications that deceased had not in fact read the various wills at all.

[40] Despite these improbabilities the evidence of Mr. Greene, however, establishes that the deceased himself read Will 6 with care and that he signed each page of the will in the presence of the two witnesses. Although the evidence of Ms. Palm was not specifically put to him under cross-examination the issue of the sequence of the signing of the pages was dealt with extensively. In my view this is the type of case where the opinion of the expert witness, Ms. Palm, as to what might probably have occurred must give way to the assertions of the direct and credible evidence of Mr. Greene. See: *Stacey v Kent* 1995 (3) SA 344 (E) at 349 C. I must accept therefore on a balance of probabilities that Will 6 was validly executed in terms of the Wills Act.

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