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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LIVERPOOL
PROPERTY, TRUSTS & PROBATE LIST (ChD)

Liverpool Civil & Family Courts
35 Vernon Street
Liverpool L2 2BX

Friday 6th September 2019

Before HIS HONOUR JUDGE HODGE QC
sitting as a Judge of the High Court

IN THE MATTER OF ABDULLA NAGI KASSIM DHALEI (Deceased)

BETWEEN:

Ms NUHA ABDULLA NAGI KASSIM
& 13 Others

Claimants

-v-

Mrs IMAN AHMED ABADI SAEED

Defendant

MRS NICOLA PRESTON (instructed by ESN Solicitors, Birmingham) appeared on behalf of **the Claimant**

MR DAVID GREEN (instructed by Patricia Burge Solicitors, Southport) appeared on behalf of **the Defendant**

APPROVED JUDGMENT

(Approved in London without reference to any papers and without checking any references)

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JUDGE HODGE QC:

1. This is my extemporary judgment on the trial of a contentious probate claim. It is divided into seven sections as follows:

A: Introduction

B: The deceased and his family

C: The trial and the witnesses

D: The applicable law

E: The claimants' submissions

F: The defendant's submissions

G: Conclusions.

However, this division is for structural reasons and for ease of exposition only. I make it clear that each section of this judgment has informed other sections of the judgment.

A: Introduction

2. The late Mr Abdulla Nagi Kassim Dhalei ("the deceased") died in Jakarta, Indonesia, but domiciled in England and Wales, on 23 March 2016. The defendant, Mrs Iman Ahmed Abadi Saeed, is his third wife and the sole executrix and principal beneficiary of the document which she asserts is the defendant's true last will dated 10 October 2012. Probate of that will was granted to the defendant out of the Liverpool District Probate Registry on 24 August 2016. The net estate was sworn for probate purposes at £365,607.

3. The will was in fairly simple terms. It appointed the defendant as the deceased's sole executrix and trustee. By clause 3, if the defendant predeceased the deceased he appointed his sister-in-law, the defendant's sister (who is four years younger than her and who apparently lives in Fazakerley) to be the guardian of any of the deceased's children who at the time of his death had not attained the age of 18.

4. Clause 4 of the will gave two of the deceased's properties, at 30 Beaconsfield Street and 140 Granby Street, Liverpool 8, to the defendant "… to dispose of for such charitable purposes as she may choose."

5. Clause 5.1 gave the residue of the deceased's estate to his trustees on trust to pay his debts, funeral, testamentary expenses and inheritance tax and to hold the remainder as set out below. There was a direction that debts, funeral and testamentary expenses and legacies were to be paid out of the capital of the deceased's estate.

6. Clause 5.2 was headed "Absolute residuary gift." The deceased gave his residuary estate to his wife absolutely but if she were to predecease him he gave his residuary estate to such of his five named children by his marriage to the defendant as should survive him, and if more than one in equal shares absolutely.

7. Clause 6 provided that anyone who did not survive the deceased by at least 28 days should be deemed to have predeceased him for all the purposes of his will and any codicil, except for the purposes of clause 2.

8. There was provision for the incorporation of the standard provisions of the Society of Trusts and Estates Practitioners, subject to the deletion of certain paragraphs; and by clause 8 it was directed that clause headings were for reference only and did not affect the interpretation of the will.

9. The testimonium and attestation clause simply said that the will had been signed by the deceased on 10 October 2012; there was no indication that it had been read to the deceased.

10. The two witnesses to the will were the will draftsmen, Mr Edward Abenson, and a legal secretary, Jacqueline Tollett, now Mrs Jacqueline Harris. Mr Abenson, however, added his own name, address and occupation below the signatures of each of the two witnesses. He explained that Mrs Harris must have omitted to complete those details herself after signing her signature and he had, out of customary practice, mistakenly inserted his full name, address and occupation in the place for both witnesses.

11. The defendant is represented before me by Mr David Green of Atlantic Chambers, Liverpool, instructed by Patricia Burge Solicitors of Southport. The original claimants are the 14 children of the deceased's first two wives. They challenge the validity of the 2012 will on the sole ground of want of knowledge and approval. They are represented by Mrs Nicola Preston of No5 Chambers in Birmingham, instructed by ESN Solicitors of that city.

12. It is accepted by the claimants that the will was duly executed and witnessed. It is accepted that the deceased possessed the necessary testamentary capacity at the time he executed the will. There is no allegation of any undue influence. The sole ground of challenge to the validity of the 2012 will is want of knowledge and approval.

13. It was, I think, George Bernard Shaw who said that, "The single biggest problem in communication is the illusion that it has taken place." That observation has a particular resonance in the present case. The Judicial College organizes and runs a course entitled

"The Judge as Communicator". Its aim is to improve judicial skills in communicating with those who appear before a judge in court. One of the lessons it teaches is that it is not enough simply to ask a litigant in person whether they have understood what you have said to them in court but to test their understanding by asking them to paraphrase in their own words what it is that the judge has just told them. During the course of the trial it seemed to me that this is a lesson that could usefully be learned by any will draftsman who is acting for a client whose first language is not English or who, for any other reason, has apparent difficulties in fully understanding that language. This case may serve as a warning to will draftsmen that it is good practice in such a case to ask the client to paraphrase the terms of the will when he comes to execute it.

14. It is the claimant's case that the deceased, who came to England from Yemen in 1973, was illiterate in all languages and that he also had very little knowledge of spoken English. The will, which was naturally written in English, was not read over to him in his own Yemeni dialect of Arabic, and the claimants say that he could not have read it or understood it himself.

15. The claimants also contend that the terms of the will are not what the deceased might be expected to have made; there is a bequest of two properties for such charitable purposes as the defendant should nominate. More significantly, it is said there is no provision for any of the claimants, the deceased's 14 children by his first two marriages, or for their mothers, or for any of the claimants' own children, the deceased's grandchildren.

16. The defendant disputes the claim and asserts that the 2012 will is valid. She relies on the statement of the solicitor who drafted the will, Mr Edward Abenson, who attended its execution and was one of its attesting witnesses.

17. The defendant made her own will at the same time although it was only produced on the morning of the third day of the trial, after the defendant had already concluded her evidence. Apart from the absence of any gift to charity, the terms of the defendant's will correspond to those of her husband's will; he was appointed as her sole executor and he would have been her sole residuary beneficiary if he had survived his wife.

18. The claim form was issued on 11 November 2017. It had been preceded by a request for a *Larke v Nugus* statement which had been made on 1 December 2016 by the solicitors then instructed by the first claimant, I Will Solicitors Limited, who had followed up the request with a chasing letter dated 14 December 2016.

19. The response from Abensons Solicitors is dated 15 December 2016. It purports to come from Cheryl Gault, a probate para-legal with Abensons, but Mr Abenson explained that he had had input into the terms of the response because he had been the solicitor who had drafted and witnessed the deceased's will.

20. There is within the trial bundles a document (at pages 253 to 255) which was disclosed by the defendant and was described as "Handwritten notes from Abensons' will file" although, in fact, Abensons have, despite trying to locate it, been unable to find any will file at all. Such documents as are in evidence from Abensons were found either in a separate file relating to a power of attorney, which was apparently prepared at the same time as the wills, or in what was described as a "miscellaneous" file.

21. Mr Abenson was unable to identify the author of the handwritten note. The defendant was not asked about it. Although I do not make any specific finding of fact, it seems to me that the most likely explanation for this handwritten note is that it was prepared by Cheryl Gault for the purpose of preparing the *Larke v Nugus* response and was based upon information communicated to Miss Gault by the defendant. I say that because it contains the names of all three wives of the deceased and the number of the deceased's children by each of them, with the comment that the second was the mother of Nuha, the first claimant, and it also records that Nuha had contacted the defendant after the date of death asking for money and properties for her and her brothers. That is a reference to events that had taken place in or about June and July 2016.

22. The response to the *Larke v Nugus* request is at pages 241 and 242 of volume 3 of the hearing bundle. It recorded that the deceased had been an existing client of Abensons' practice since 2007 and 2008. It contains reference to the fact that the deceased had attended at the office with his wife, the defendant, and that mirror wills had been discussed.

23. The terms of the will were said to have been explained to the client by Mr Edward Abenson. The issue of testamentary capacity had been addressed in the course of a general conversation, which had given Abensons no reason to doubt that the deceased had any health or capacity issues and he was also said to have been acting rationally. In response to the question seeking details of all the deceased's family members, it was said that he had one separated wife in Yemen, one divorced wife in Yemen, one wife in the UK, and in total 19 children.

24. In response to question 12, enquiring about whether the deceased was aware of any potential claims against the estate, in particular the exclusion of most of his family members, the response was: "Not aware of any potential claims at all; 14 of his children are adults."

25. In response to question 14: "Once the will was prepared how were the provisions explained to the deceased?" the answer was: "The will would have been read to the client for approval prior to signing." In response to question 15, enquiring how the deceased had given his approval to the will, the answer was simply: "Verbally."

26. In answer to question 16: "We understand that the deceased is not fluent in reading the English language, therefore what steps were taken to ensure the deceased understood the contents of the will at the time of execution?" the short answer was: "Will read back to client."

27. In answer to question 17: "Did the deceased make any previous will?" the answer was simply: "Possibly in 2010, but not with ourselves."

28. In answer to question 20: "Was any other person present at the time of execution other than the deceased and the two witnesses to the will?" the answer was: "No."

29. As I have said, the response to the *Larke v Nugus* letter was given on 15 December 2016. An undated letter was sent to the defendant, expressed to be a letter of claim on behalf of the children of the deceased. Although undated, a later letter says that it was sent on 24 March 2017 by recorded delivery. That later letter is dated 15 May 2017 and comes from ENS Solicitors. It was not responded to by the defendant until she wrote a one-page response, which was received by the claimants' solicitors on 24 November 2017.

30. In cross-examination of the defendant Mrs Preston pointed to the concluding sentence of that letter as exemplifying the attitude the defendant has taken to this claim throughout: "I would like you to know that I will be jealously guarding the interests of my family and I will vigorously defend the right of my children in any way, shape or form." The claim form had, of course, by then been issued although it is not clear whether it had been served by the time this response was received by the claimants' solicitors. The defendant, in the course of her cross-examination, explained that she had given the letter before claim to her solicitor, Cheryl. In view of that, I consider it likely that the defendant had also earlier been consulted by Abensons, acting through Miss Gault, about the terms of the response to the *Larke v Nugus* letter and that forms part of my reason for supposing

that the three-page manuscript note at pages 253 to 255 was based on Miss Gault's attendance upon the defendant.

31. The claim form and accompanying particulars of claim, drafted by Mrs Preston, sought a decree pronouncing against the 2012 will, revocation of the existing grant of probate, and a grant of letters of administration to the deceased's estate on the footing that he had died intestate.

32. It is clear from an attendance note prepared by another Liverpool firm of solicitors, Jackson Lees (formerly Jackson & Canter), that the ninth and thirteenth claimants had attended at Jackson Lees's offices and had discovered the existence, but not the terms, of an earlier will of the deceased drafted by Mr Andrew Holroyd of Jackson & Canter and executed by the deceased on 24 June 1997. The ninth and thirteenth claimants had known that the deceased had previously instructed Jackson & Canter and they had approached them with a view to seeing whether they held any will for their late father.

33. The existence of the will was revealed to the ninth and thirteenth claimants, but not the terms of the will because the ninth and thirteenth claimants were not beneficiaries named in it. They were simply told that the defendant was one of the named beneficiaries, but they were told nothing more. They clearly did not tell the solicitors acting for the claimants in this litigation because otherwise the claim would not have been drafted on the footing that the deceased had died intestate.

34. Despite their knowledge of an existing previous will to that which was being challenged, all fourteen claimants, including claimants nine and thirteen, made statements of testamentary scripts which referred only to the 2012 will. The first claimant also signed a statement of truth verifying the particulars of claim, which included the assertion that the deceased had died intestate.

35. By the beginning of July of this year the existence of the 1997 will had been revealed to the claimants' legal representatives. They therefore issued an application to amend the particulars of claim to take account of the provision of the 1997 will, and that application was heard by me on the morning of the first day of the trial without opposition from Mr Green. I gave the necessary permission to amend the particulars of claim to seek an order propounding the 1997 will. Under that will, only five of the fourteen claimants are beneficiaries; they are claimants six, seven, eight, ten and eleven. Only claimant number eight was a witness before me at the trial. I understand that the other four

claimants who are beneficiaries of the 1997 will are resident in Yemen or, in one case, in the United Arab Emirates.

36. The effect of my order is that nine of the claimants have ceased to be such. However, I will refer to each of the claimants as the first, second, third etc. claimant as the claim was originally constituted. I do so because it will cause confusion if I refer to individual claimants by their actual names because they are all members of the same extended family and many of them share names in common.

37. The case was listed for trial over five days, commencing on Monday 2 September, because there were so many witnesses and parties. Three of the claimants, the fourth, fifth and eighth, do not speak English and they gave their evidence through an interpreter, as did one other of the claimants' witnesses.

B: The deceased and his family

38. The deceased was born in Yemen - then the British colony of Aden - on 11 August 1936. He married twice in Yemen. By his first wife he had nine children; they include claimants three, four, five, eight and nine. By his second wife the claimant had a further five children, including claimants one and thirteen. I note that claimant one, who is the youngest child of the deceased's second wife, was born on 2 January 1970. I also note that Mr Abdul Rahman Abdulla Nagi, the fifth claimant, was born on the previous day, 1 January 1970, as one of the children of the deceased's first marriage.

39. The deceased moved to the UK in 1973, first to Birmingham and then in the early 1980s to Liverpool. The deceased had been a businessman in Yemen and had owned property there but this had been expropriated by the communist government. In the United Kingdom he owned and ran successively three shops in Birmingham but the last of them was not apparently a success and the deceased then moved to Liverpool. He had a non-self-service shop at 139 Kingsley Road, Liverpool 8 and he later purchased a self-service mini-market at 140 Granby Street, Liverpool 8.

40. At various times various of the deceased's children came to join him in the United Kingdom and they assisted the deceased in his shops; but at some point in the early and certainly by the mid-1990s the deceased had ceased actively to run the shops and 139 Kingsley Road was taken over by the fourth and thirteenth claimants, and the fifth and ninth claimants took over the running of the shop at 140 Granby Street. By the time the deceased came to marry the defendant he had ceased actively working in the shops and

was living on his pension and the rental income from his properties, both in the United Kingdom and in Yemen, which had later been restored to him.

41. The deceased married the defendant in Yemen on 24 August 1996. The deceased was then 60 years of age and his new wife, who was born on 25 February 1974, was 22 years of age. It was an arranged marriage. The defendant's mother was not particularly happy with the difference in age between her daughter and the deceased but the view that the defendant and her father had taken was that she would be better off married to someone who could receive her to live in the United Kingdom, and so would any children of the marriage.

42. The defendant did move to the UK to live with the deceased. They originally lived together in the property at 30 Beaconsfield Street, Liverpool 8. Their first child was born on 9th August 1997 and eventually they came to have five children, the youngest of whom is, sadly, autistic. Those five children were born between 1997 and 2006 and they are now aged between 13 and 22. The 1997 will was, of course, made shortly before the birth of their first child. Oddly, for a solicitor-drawn will, it contained no appointment of executors or trustees, and was confined to property and assets in the United Kingdom only.

43. Clause 3 gave the deceased's interest in a jointly-owned property at 52 Upper Warwick Street, Liverpool 8 to "… such of them, the child or children of myself and my wife, Iman Ahmed Obadi of 30 Beaconsfield Street, Liverpool 8 who are living or en ventre sa mere at the time of my death, and if more than one in equal shares."

44. Clause 4 gave the residue of the deceased's estate on the usual trusts for sale and conversion and to pay inheritance tax and other expenses and then to divide the residuary estate equally between 12 named individuals, one of whom was the defendant and another five of whom were children of the deceased's first and second marriages: claimants number six, seven, eight, ten and eleven. There was provision for the share of any deceased beneficiary to accrue to the others in the event of them predeceasing the deceased. One of the named beneficiaries was M.H. Hamed, a cousin of the deceased, who was one of the witnesses called by the claimants before me.

45. There was a detailed testimonium and attestation clause: "This will, having first been read over to the above-named Abdulla Nagi Kassim Dhalei (who understands the language but has an imperfect knowledge of and cannot read the English language) by me the undersigned, William Andrew Myers Holroyd, in English and having been truly

interpreted to the said Abdulla Nagi Kassim Dhalei by me, Abdul Rahman Hayel, the undersigned who understands both the English and the Arabic languages, which reading and interpretation were both done in our joint presence when the said Abdulla Nagi Kassim Dhalei appeared thoroughly to understand this will and to approve the contents thereof, was signed by the said Abdulla Nagi Kassim Dhalei as his last will in the presence of us both present at the same time who at his request in his presence and in our joint presence and attested by us in the presence of the testator and of each other." The will was then witnessed by Mr Holroyd and by Mr Hayel.

46. The deceased suffered a stroke in 2008. He was not allowed to drive for about a year afterwards but he then recovered his licence, presumably in accordance with DVLC standard practice which is to suspend a driving licence for a minimum period of a year after someone suffers an incapacitating medical incident; and the evidence is that he continued to drive until about the year before his death. The deceased had been 60 at the time he made his 1997 will and was 76 at the time he made his 2012 will; the latter was made four years after his stroke.

47. The deceased went off on his own to stay with relatives of the defendant in Indonesia in the middle of December 2015. Sadly, whilst in Jakarta, he suffered a stroke in February 2016 and he passed away on 23 March 2016 aged 79.

C: The trial and the witnesses

48. The trial took place before me over five days, commencing on Monday 2 September. Seven of the claimants gave evidence before me; they were claimants one, three, four, five, eight, nine and thirteen. In addition, I heard from the husband of claimant three, Mr K.H. Hamed, and from two further witnesses, Mr A.M. Yaya, who had been a friend of the deceased since about 1953, originally in Aden but who had then moved to the UK, and from Mr M.H. Hamed who was a cousin and friend of the deceased and one of the 12 named beneficiaries in the 1997 will.

49. On the first day of the trial I heard from seven of those witnesses in the following order: I heard from the first claimant, a daughter of the deceased by his second wife who gave evidence for about 50 minutes. I then heard from the eighth claimant, who is a daughter of the deceased from his first marriage; she gave evidence through an interpreter for about 30 minutes. I then heard from the fourth claimant, who is a son of the deceased through his first marriage for about 30 minutes, again speaking through an interpreter. I

then heard from the fifth claimant, who is a son of the deceased, again by his first marriage, who gave evidence for just over 35 minutes, again through an interpreter.

50. I then heard, after lunch, from Mr A.M. Yaya, who gave evidence for about 10 minutes. I then heard, for just under 20 minutes, from Mr M.H. Hamed, who again gave evidence through an interpreter. I then heard from the third claimant, who gave evidence for about 45 minutes; she is a child of the first marriage. Finally that day, I heard from Mr K.H. Hamed, the husband of the third claimant, who also gave evidence for about 35 minutes.

51. On the morning of the second day of the trial I heard from the ninth claimant, a child of the first marriage, who gave evidence for about 55 minutes. Finally I heard from the thirteenth claimant, a child of the second marriage, who gave evidence also for about 55 minutes. On the afternoon of the second day I heard from the defendant, who gave evidence for about 3 hours and 20 minutes, concluding just after 5 o'clock on the afternoon of the second day of the trial.

52. On the third day of the trial I heard from the defendant's witnesses. I heard from Mr Paul Powell, an electrical contractor, for about 15 minutes. I then heard from Mr Zakia Hussain for a similar length of time. He is an estate agent. I then heard from Mr Abenson, the solicitor, who gave evidence for about two and a quarter hours, both before and after the short adjournment. Then, finally, and for less than 10 minutes, I heard from Mrs Jacqueline Harris, who was the other attesting witness to the 2012 will.

53. There was intended to be called a sixth witness for the defendant but the defendant's legal representatives had been unable to locate him to call him at the trial. That was a Mr Paul Ingman, a builder. The defendant relies upon his evidence as a hearsay statement.

54. I will consider each of these witnesses in turn. The first claimant accepted that she had taken the lead role in instructing solicitors although I am satisfied from my observations that she was assisted in this principally by the thirteenth claimant. The first claimant was emphatic in evidence and she had a tendency to try to take control of her cross-examination.

55. All of the claimants and their witnesses asserted that the deceased had had a very limited understanding of English. The first claimant described him as speaking only "broken" English. She accepted that her late father had been a good businessman and that he was quite ambitious. She maintained that under Islamic principles an illegitimate child was not allowed to inherit. She had not inherited under the 2012 will and therefore her

reasoning was that she was now considered an illegitimate child. I think that, in logic, that is known as “the fallacy of the undistributed middle”. She said in terms that she was here in court to say that she was a legitimate child and entitled to inherit from her late father. She said that we had a duty now to rectify the problem and to bring the family together: "We don't want to feel that our dad left a grudge. We have to focus on the solution and not the problem."

56. I am satisfied that the first claimant, like all the other claimants who gave evidence before me, is here because she, and they, genuinely cannot accept that their late father could have made a will of his own volition and understanding that had excluded the children from his first two marriages and had made no provision for them. In her witness statement the first claimant had made no reference to any stroke suffered by her late father or to his attitude to charity. Indeed, there was no reference to any stroke or charity in the witness statements of the third claimant or even the thirteenth claimant, who also omitted any reference to any stroke.

57. The eighth claimant was the only beneficiary of the 1997 will to give evidence before me. She spoke of a loss of memory which she said her father had suffered after his stroke which she said had affected his brain; she said that he was unable to take decisions on his own and that they had been taken by the defendant. The deceased had not wanted to do anything after the stroke without consulting his wife.

58. That was not in accordance with the evidence of any of the other witnesses insofar as it referred to a loss of memory, and that had not been mentioned in the eighth Claimant's witness statement. The only other reference to any possible mental condition was from the fifth defendant, who claimed that the defendant had used to say that her husband had Alzheimers. Again, there was no evidence supporting that; as I have made clear, there is no challenge to the will on the grounds of want of testamentary capacity.

59. Although the fourth claimant gave evidence through an interpreter, he was able to understand his witness statement and to answer some of the questions in English. He was adamant that his father's command of English had never improved over the years.

60. The fifth claimant was the witness who claimed that the defendant had talked about her husband as having Alzheimers. The fifth claimant accepted that the deceased had resumed driving about a year after his stroke. It was he who said that the defendant had concealed the fact that the defendant’s youngest child had suffered a defect in his skull for

about a year, keeping this from his half siblings. The fifth claimant claimed to be the closest son to his late father.

61. The next witness, Mr Yaya, made it clear that under Islamic principles the deceased's children should have inherited. The evidence of both Mr Yaya and Mr M.H. Hamed came from witnesses who I am satisfied were both seeking to tell the truth, but I find their evidence to be of little assistance to me because it is clear that they had had very limited contact during the last 20 years of the deceased's life, and after his marriage to the defendant.

62. The third claimant asserted that his father had had only what he described as "shop English". He accepted that his father could be strong-willed and difficult and stubborn, but he said that later in his life he would not make his own decisions. He again made it quite clear that, in accordance with Islamic principles, everyone should have inherited under his late father's will.

63. The husband of the third claimant, Mr K.H. Hamed, spoke of his father-in-law as having spoken only “broken” English. It was he who described being present at two auctions where he said his father-in-law had continued bidding even when the auctioneer had pointed out that the bid was with the deceased because he said his father-in-law had not understood what was being said to him by the auctioneer. Mr K.H. Hamed said that it was the ninth claimant who had been the deceased's favourite son. He described the deceased as having an eye for business and of being a tough character who would not change his mind; but he said that the deceased had not been the same man after his stroke. Mr K.H. Hamed accepted that there had been at least a period of 10 years when the two men were not on speaking terms; and he accepted that he had been in touch with the deceased only occasionally. He said that as a Muslim he, Mr K.H. Hamed, knew that everyone should inherit. He accepted that it had not been out of keeping for the deceased to leave money to charity; indeed the fifth claimant had describe his father as "very charitable." The eighth claimant had said that the deceased had donated to charity, and in his witness statement Mr K.H. Hamed had described the deceased as "a charitable person" (in paragraph 21).

64. The ninth claimant asserted that the defendant had just been able to speak very simple, basic English. He described him as a good businessman and good with money, but he would not accept that he had been stubborn. He accepted that his father had been able to communicate with workmen, but he said that his English had not got any better

over time. He said that his father had been unable to distinguish between the words "Tuesday" and "Thursday." He was one of the two sons who had attended Jackson & Canter's offices; and he said that his understanding had been that the 2012 will had overridden the 1997 will.

65. At the end of his evidence I asked the ninth claimant about the deceased's full names and whether there was any significance to any of them. He was able to tell me that the fourth name, Dhalei, was the village from which his father had come. The second name, Nagi, had been the name of the ninth claimant's grandfather and of the deceased's own father. He did not know if there was any significance in the name Kassim.

66. The final witness for the claimants was the thirteenth claimant. He was a combative witness right from the very start of his evidence; in response to almost Mr Green's first question he asked: "Why are you repeating this question to me if you know the answer already?"

67. In his oral closing, Mr Green submitted that the thirteenth claimant was someone who had given unreliable evidence; he described him as an "unsatisfactory witness" and as "very belligerent." Mr Green submitted that the thirteenth claimant had answered very few questions and had preferred to make submissions rather than answering questions. Mr Green said that the thirteenth claimant had been keen to point out the strength of the claimants' case based on documents of which he had no personal knowledge.

68. In paragraph 31 of his witness statement the thirteenth claimant had said that he had attended with his father to solicitors' offices, especially Abensons Solicitors, but Mr Green pointed out that he had provided no details. In the course of his cross-examination, however, the thirteenth claimant had picked up on a note of an attendance upon Mr Allastair Davey of Abensons on 13th October and had asserted that he, the thirteenth claimant, had also attended that meeting, although his presence was not recorded by Mr Davey. Mr Green submitted that I should reject the thirteenth claimant's evidence that he was present at that meeting and should prefer the attendance note, which simply recorded that Mr Dhalei had been accompanied by his granddaughter, who was then named. There was no reference to anyone else being present.

69. I found the thirteenth claimant to be very assertive, volatile and excitable; he consistently sought to take control of the questioning. He was adamant that the inheritance should have been shared with everyone and that the members of the family had all worked for the deceased's money. He asserted that the deceased's English was

very poor and that he had been unable to explain himself in English. He claimed that the deceased would not have appointed his sister-in-law to look after his children; he said that no-one in Islam would do that. No-one of the other witnesses for the claimant had made that point.

70. In her closing Mrs Preston submitted that I should accept what the thirteenth claimant said about being present at the meeting on 13th October because he had no reason to say that he was there if he was not there.

71. I do not regard the thirteenth claimant as a reliable witness. I do not accept that, contrary to the attendance note, he was present at that meeting with Mr Davey. I am satisfied that he has latched upon the attendance note, as Mr Green submitted, to pad out what had not been said in paragraph 31 of the thirteenth claimant's witness statement, which had provided no detail of any actual meeting with Abensons.

72. Those are my views about the claimants and their witnesses; but the significant feature is that none of them knew anything about either the 1997 or the 2012 wills. None of them knew anything about the circumstances in which either will had been made; none of them were able to say whether their late father had understood the contents of either of those wills when they had been made. All they can do is to provide evidence about what they say was their father's lack of understanding of the English language.

73. I found Mr Powell to be a forthright and reliable witness. He made it clear that he had had conversations with the deceased; but he accepted that it was only about the work in which he was involved. He accepted that there had been no need for detailed conversations; he would tell the deceased what needed repairing and the deceased would probably ask how much it would cost. Mr Powell said that the deceased was not stupid, and that when there had been a problem about the deceased's attempt to use a particular extractor fan to replace one that was broken Mr Powell said that the deceased had readily understood why the proposed replacement was not up to standard. It was suggested to Mr Powell that the deceased did not understand but Mr Powell would not accept that: he said "He understood. It wasn't the best English, it was broken English, but I've heard worse." You could converse with him; although not about politics or, apparently, football. He did, however, accept that he, Mr Powell, had a tendency to point to things when he was explaining himself. I find that Mr Powell was a reliable witness who does give some support to the defendant's evidence and case about her late husband's command of English.

74. I derived less assistance from Mr Zakia Hussain. I found him to be taciturn and hesitant in his evidence. His contact with the deceased had lasted for less than 18 months, from July 2014 until about 10 December 2015 (when the deceased had left the UK to travel to Jakarta). Mr Hussain put his contact with the deceased at about the frequency of a couple of times a month; on that basis there would have been a maximum of 36 conversations. He provides some, but limited, support for the defendant's evidence and case. For what it is worth, Mr Ingman's untested evidence also provides such support.

75. I turn then to the defendant herself. I found her to be sullen in evidence and she did not focus upon listening to, or always seeking to answer, the question that was put to her by Mrs Preston. She made it clear that she had married the deceased to secure a better life for herself and her children in the United Kingdom. I am afraid that I do not accept her account of how she financed her early property purchases. I am satisfied that the money was derived not just from her initial dowry of £10,000 but from other moneys derived from her husband. I accept that she ensured that properties were purchased or transferred into her own name, or into the joint names of herself and her husband, in order that she and her children should benefit from them; that had been her original intention in marrying her husband: to secure a future for herself and her children as and when anything happened to her husband, who was some 38 years older than her.

76. The defendant accepted in cross-examination that the three properties at 80 Aspen Grove, 84 Lime Grove and 55 Dorrit Street, all of which had been transferred from her husband into their joint names shortly before the date of registration of 19th May 2005, had been to protect her children "in case I died." However, I note that the property purchases, and those joint transfers, took place a long time before the stroke in 2008.

77. I am not satisfied that the defendant took any advantage of the deceased after his stroke in 2008; if so, I would have expected a will to have been made in 2009 and not in 2012 or, even if there was such a will, in 2010. However, it must be borne in mind that even the claimants accept that before his stroke the deceased had been a strong-willed individual. I do not accept that that condition ceased upon his marriage to the defendant.

78. It is worth noting that in his 1997 will the defendant was one of only 12 beneficiaries; those 12 beneficiaries included only five of the deceased's 14 children by his first two marriages. The only provision made in the 1997 will for any children of his marriage to the defendant was a half-interest in a jointly-owned property, 52 Upper

Warwick Street. The defendant says that she knew nothing about the 1997 will and was surprised to discover its contents.

79. I do not consider that the defendant manipulated the deceased into purchasing properties in her name in order that she and her children should benefit. The deceased was conscious that his 1997 will made only very limited provision for his recently acquired third wife and for the child whom she was already bearing him and any future children that might be born to their marriage. He was therefore ensuring that she would have some additional provision for herself.

80. I am satisfied that the problems in the relationship between the defendant and her husband's other children were because of their attitude towards their recently married stepmother, who was younger than any of them, and because of the age difference between her and their father and their disapproval of that, and because of the way in which their father was treating their own natural mothers.

81. It was put to the defendant by Mrs Preston that her husband had learned over time to interact with people in English, and to give the impression that he understood more English than he actually did, and that it was only when pressed that it became apparent that he could not understand; but the defendant would not accept that: she said that his English was basic but he could communicate with people. The defendant would not accept that it was difficult for him to communicate and for people to understand what he was saying in English. I accept the defendant's evidence on that point. I accept that, although his English was poor, the deceased could at least communicate and make himself understood; at least in the period from 1996 onwards to which the defendant can speak. I do, however, accept the point made by Mrs Preston that the defendant's attitude throughout has been to jealously guard the interests of her own family, and vigorously to defend her rights and those of her children.

82. Mrs Harris was a patently honest, truthful and reliable witness; but it was clear that she had only witnessed the execution of each of the two wills and had taken no part in what led up to that. She is unable to provide any support for the defendant's case beyond establishing what is not in any event challenged, which is that the 2012 will was duly executed and witnessed.

83. I turn, finally, then to Mr Abenson. He was admitted as solicitor in November 1971; he had therefore practised for some 40 years when he came to draft the deceased's will. It was estimated that during his time as a will draftsman he must have been involved in the

preparation of over 3000 wills, of which over 2,000 would have been for married couples. His only recollection of this particular will was attributable to what described as the "unusual family dynamics"; he said he had never come across a man with 19 children before, which is readily understandable. Beyond that, however, he had virtually no recollection of the instructions for, or execution of, this particular will in 2012.

84. During the course of his cross-examination, Mrs Preston put to Mr Abenson that the deceased's standard of spoken English was very poor. Mr Abenson's response was that he had had a general conversation with the deceased. He said he would not allow anyone to sign a will who did not understand it; he would have explained the will fully to the deceased. He made the point that it was not a difficult will to explain or to understand. He disagreed with Mrs Preston's proposition that the deceased was incapable of holding a general conversation in English. He said he had held such a conversation with him; he said that he couldn't remember the specifics, but he would have been satisfied that the deceased had testamentary capacity.

85. In relation to question 11 in the *Larke v Nugus* letter, enquiring about the deceased family members, to which Mr Abenson had responded "One separated wife in Yemen, one divorced wife in Yemen, one wife in UK. In total, 19 children", Mr Abenson said that he had provided that answer from his general recollection. There was no further challenge to that.

86. He was then asked about question 12 and why, having made the point that he was not aware of any potential claims at all, he had added that 14 of his children were adults. Mr Abenson said: "I don't remember why I said 14 of his children were adults." He was then asked what possible relevance it had to the question he was being posed and he said: "I don't know. I can't remember if I specifically discussed any potential claims against the estate. I can't recall if I asked him any details about his other children."

87. Mr Abenson was asked how he had been able to say that the deceased had been perfectly lucid since he must have had so little exchange in English with the deceased. Mr Abenson said that that was not true. It was put to him that Mr Abenson could not say that the deceased had been perfectly lucid because his English was so poor that he could not have had a conversation with him. Mr Abenson said: "I disagree. I read the will back in every case, so I'm sure I would have explained the will thoroughly, and if I had had any doubts about that I wouldn't have allowed him to sign the will. I do it in every case. I

cannot exactly recall doing it with the deceased but I would have read the will and had to be satisfied he understood everything in it. It was not a difficult will to explain."

88. It was put to him that the deceased would simply have nodded his agreement. Mr Abenson said: "I know when someone understands a will. If in doubt I paraphrase and explain the will. I wouldn't have allowed him to sign it if I felt he was being coerced." It was put to him again that the claimants' case was that the deceased could not understand English words. Mr Abenson's response was: "I wouldn't have allowed him to sign the will if I felt he didn't understand it. In every single case I would get a vocal response. It would have been explained and read back to him."

89. I accept that that is Mr Abenson's honest recollection of his interaction with the deceased. The question I will have to consider is whether that amounts to sufficient evidence of knowledge and approval in this particular case. I am satisfied that Mr Abenson was honestly doing his best to recall, hindered as he was by the absence of any will file.

D: The applicable law

90. There was no real disagreement between counsel as to the applicable legal principles. Mr Green accepts that in the circumstances of the present case, where the deceased was illiterate, both in English and in the Yemeni dialect of Arabic, the defendant bears the burden of satisfying the court, on a balance of probabilities, that her late husband knew and approved of the contents of the 2012 will. Mr Green emphasised that evidence of knowledge and approval can take any form; a will may be read over to the testator, or he may have given instructions for his will.

91. Although there was a manuscript note written by the defendant setting out what was said to have been the couple's original testamentary intentions, and which found its way into such files as Abensons retain and can be found at page 352 of the hearing bundle, nevertheless Mr Green submits that any circumstances of suspicion attaching to that document are at the less serious end of the scale. He submits that the involvement of the defendant in the preparation of the will is not such as to give rise to serious concern about whether instructions for the will emanated from her. I will consider that submission in due course.

92. I was taken to a number of passages in three of the standard works on wills and probate. In *Theobald on Wills*, 18th edition, I was taken to paragraph 3-017:

> "A testator must know and approve of the contents of his will. This is because a will must be the result of a testator's own intelligence and volition, though its contents need not originate from the testator provided he understands and approves them. Thus a will is invalid if its contents originate from another person and the testator executes it in ignorance of its contents... In *Gill v Woodall* [2011] Ch 380, the Court of Appeal confirmed that the correct approach to considering knowledge and approval is asking a single question: did the testator understand (a) what was in the will when he signed it, and (b) what its effect would be. That question should be considered in the light of all the available evidence and the appropriate inferences to be drawn from that evidence. Lord Neuberger MR held that where a will had been professionally prepared by a solicitor, duly executed, and read over to a testator before signing, there was a strong presumption that the will represented the testator's instructions at the point of its execution. However, this was not conclusive. In the unusual circumstances of that case the burden on the propounder to prove knowledge and approval had not been discharged. The testatrix suffered from a severe anxiety disorder and agoraphobia. This was unlikely to be picked up by a solicitor meeting the testatrix for the first time. In all the circumstances she had not known and approved of the contents of the will... In *McCabe v McCabe* [2015] EWHC 1591 (Ch) the single stage test was described as whether there was satisfactory proof that the contents of the will had been brought home to the testator."

93. I find that a convenient formulation: whether the defendant has satisfactorily proved that the contents of the will were brought home to the deceased. At paragraph 3-018, the point is made that: "The testator must know and approve of the contents of his will but he need not understand its legal effect. Thus, if the testator does know and approve of the contents of his will, it is immaterial that he, or the draftsmen employed by him, is mistaken as to its legal effect."

94. The position of an illiterate testator is addressed at paragraph 3-022: "If the testator could not speak or read and write and gave instructions for his will by signs, the court requires evidence as to the signs used establishing what the testator understood and approved of the contents of his will. Similarly, the knowledge and approval of a blind or illiterate testator must be proved, e.g. by evidence that the will was read over to him

before execution." The footnote refers to the case of *Fincham v Edwards* (1842) 3 Curtis 63 where proof was by other evidence than reading over and that was held to be sufficient. Mrs Preston accepts that there is no strict legal requirement that a will must be read over to a testator, although she makes the point that clearly this is the preferable course in any case of doubt.

95. I was referred to paragraph 34.71 of *Tristram and Coote's Probate Practice*, 31st edition. Again, that addresses the position of a blind or illiterate testator: "The court must always be satisfied that such testator knew and approved the contents of the will. If the will is proved to be in conformity with the instructions of the testator that will suffice, even though the will may not have been read to the testator." Again, reference is made to the case of *Fincham v Edwards*.

96. Finally, I was referred to *Williams, Mortimer and Sunnucks*. At paragraph 10-28 it is said that:

> "A party who puts forward a document as being the true last will of the deceased must establish that the testator knew and approved of its contents at the time when he executed it. The testator's knowledge and approval of the contents of the will are part of the burden of proof assumed by everyone who propounds a testamentary document. In ordinary circumstances the burden of proof is discharged by proof of testamentary capacity and of due execution from which knowledge and approval by the testator of the contents of his will are assumed; but in the kinds of circumstances considered below knowledge and approval must be proved affirmatively by those propounding the will."

At paragraph 10-29 on page 202 the point is made that:

> "A reading over of the will must be proper and sufficient if it is to show knowledge and approval. It might not be a proper reading of the will by the testator if he were merely to cast an eye over it, or if a draft has been sent to him for his perusal accompanied by a letter to the effect that there had been no material departure from his instructions. In *Inchport v Inchport* [2016] EWHC 3215 (Ch) the evidence was that the testator had been told what the will would contain, was taken through the draft before execution and then again told of its terms after execution. The court at first instance had no hesitation

> in concluding that the testator was aware of the nature and effect of what he was doing when he executed his will. Clearly, reading over the will at such a speed as to make it virtually impossible for the testator to follow it would not be enough. Nor, in the case of a somewhat deaf man, would it suffice to read it over in such a low voice that the testator could not properly hear it."

97. The circumstances where affirmative proof of knowledge and approval must be given are addressed at paragraph 10-33:

> "If instructions are given by a deaf and dumb person by signs and not in writing, the court will require to be satisfied that the testator made his meaning clear and that his intentions are embodied in his will. Where a testator cannot speak or write or is paralysed the court must be satisfied that the deceased knew and approved of his will. Where the will of a blind or illiterate person contains no statement to the effect that the will was read over to him, the court must also be satisfied as to knowledge and approval. Although it is preferable that the will should have been read over to such testator, or at least the substance of it explained to them, this is not essential in all cases. If the court is satisfied that the testator gave instructions for his will and that these instructions were embodied in it the will may be upheld, although it was not read over... In an appropriate case proof of the requisite knowledge and approval can and will require proof that the testator understood not just the nature of the testamentary provision he was proposing to make but also its effect."

98. Mr Green submits that where a will is professionally drafted the testator is taken to have accepted the phraseology selected by the draftsman without the need to understand the technical details. As authority for that proposition he cites the passage at paragraph 5.1 on page 63 of volume 1 of *Williams on Wills*, 10th edition: "In some cases, where the testator employs an expert draftsman to provide the appropriate wording to give effect in law to the testator's intentions, the testator has to accept the phraseology selected by the draftsman without himself really understanding its esoteric meaning; and in such a case he adopts it and knowledge and approval is imputed to him."

99. I am satisfied that that is an accurate statement of the law. It is supported by the judgment of Mr Justice Latey in the case of *Re. Morris* [1971] Probate 62 at page 79

between letters G and H: "It is not necessary for a testator to understand all of the will provided he understands its substance and that substance reflects the testator's instructions. It is sufficient for the substance of the will to be explained and understood by the testator." I direct myself by reference to those principles.

E: The claimants' submissions

100. Mrs Preston relies on the evidence of the claimants and their witnesses to the effect that the deceased spoke only very poor English and often could not be understood. They also assert that it was out of character for him to have made the gifts contained in the 2012 will. Mrs Preston points to the fact that the defendant and her witnesses state that the deceased could be understood in English and could hold a conversation in that language but the defendant herself acknowledges that the deceased was illiterate in his native language and that he was not fluent in English. She submits that the defendant cannot overcome the burden upon her of proving knowledge and approval of the 2012 will and so the court should revoke the grant of probate that she has already obtained and find in favour of the 1997 will in solemn form of law.

101. In her closing oral submissions, Mrs Preston submitted that the court must be satisfied by proof that the contents of the will had been brought home to the deceased. Mrs Preston addressed the deficiencies in Mr Abenson's conduct of the drafting and execution of the will, and also in his evidence to this court. She emphasises that Mr Abenson never asked the deceased to explain what was in the will in his own words.

102. At the end of his evidence I had enquired whether Mr Abenson had asked the deceased to explain in his own words what his will was doing. Mr Abenson said that he had explained the will very thoroughly; he would have asked the deceased: "Do you understand what I am saying?" Mr Abenson said: "I cannot recall asking him to paraphrase it; it is not my usual practice to ask a testator to paraphrase what is in the will."

103. I also asked Mr Abenson about paragraph 12 of his witness statement. There Mr Abenson had said: "I also ask the clients to read the will before they sign it, and then explain to them that once this is signed it becomes a legal document." I asked Mr Abenson what the deceased's response had been, if he had indeed asked the deceased to read the will before signing it, in view of the fact that the deceased was illiterate. Mr Abenson's response was: "I did not know he was illiterate at the time. I cannot recall what his response was when he was asked to read it." Mrs Preston then took up the

questioning; and Mr Abenson made it clear that the deceased had not told Mr Abenson that the deceased was illiterate.

104. Mr Green elicited in further re-examination that paragraph 12 of Mr Abenson's witness statement was what Mr Abenson normally did, and he could not say for certain that he had done so on this occasion. But, in response to a further (and concluding) question from the Bench, Mr Abenson made it clear that there was no reason why he should not have followed his usual practice on that particular occasion. In the light of that, Mrs Preston submitted in closing that Mr Abenson had never asked the deceased to paraphrase the will, and in those circumstances Mr Abenson could properly have had no confidence that the will actually reflected what the deceased had intended; the court could have no confidence in Mr Abenson's evidence as a result.

105. Mrs Preston then moved on to Mr Abenson's next involvement in the case, which was his response to the *Larke v Nugus* request. At the beginning of his cross-examination Mr Abenson had accepted that the purpose of such a request was to give as much information as the will draftsman could about the contents and the circumstances of the making of the will. She pointed to the responses that Mr Abenson had actually given and she submitted that his responses were neither full nor complete; rather, he had provided the minimal response possible. Mr Abenson had not provided the manuscript note at page 352 in response to the *Larke v Nugus* request. She made the point that that document was indicating anything but a mirror will for husband and wife, which was how Mr Abenson had characterised his instructions as being. She submitted that it was not credible that the intentions of husband and wife should have changed so much from the manuscript note at page 352. However, it is clear that they did because both the deceased and the defendant proceeded to make wills in the terms I have previously related.

106. Mrs Preston made the point that the manuscript note does not mention leaving anything to the defendant's husband if he should survive her; it talks about her leaving property in trust to her children. Mrs Preston made the point that, apart from the gift to charity, the two wills were very similar. She submitted that Mr Abenson had come to the task of preparing the wills with a preconceived notion of what a married couple expects to achieve by their wills, namely, mirror wills in favour of each other.

107. Mrs Preston made the point that Mr Abenson had asked no questions, and had made no enquiries, as to the other children, or whether the deceased wished to leave anything to them or to any other relations. He had not inquired as to how the deceased's estate was

already held; he had made no enquiries as to its nature or value; he had made no inquiries about any previous wills or earlier bequests. She submitted that it was rare for a solicitor to be so poorly prepared in taking directions for a will that he was being asked to draft.

108. Mrs Preston emphasised that apart from remembering that the deceased had had 19 children, Mr Abenson had really been unable to remember anything about his client, the deceased, at all. She referred to Mr Abenson's stock response to questions in cross-examination: "I can't remember... I can't recall... That's unfair."

109. Mrs Preston made the point that Mr Abenson had not even been able to explain his answers to the *Larke v Nugus* request, or where the information for them had come from. He had been unable to explain his reference to the fact that 14 of the children were adult in response to question 12. He had been asked about that but he had not said in cross-examination that it was in any way referable to the possibility of claims under the 1975 Act. In any event, he had not known if any of the adult children might be disabled or dependent.

110. Mrs Preston made the point that the reason why the defendant had not been asked any questions about her own will was because it had not been available in court or to any of the parties at the time when the defendant was being cross-examined. In her evidence to the court, the defendant had seemed to think that the deceased had left his estate not only to herself but also to her children.

111. Mrs Preston pointed to the shambolic state of affairs in Abensons' offices: they had lost the will file, they had found the will documents on a power of attorney file, they had found other random documents on what was described as a "miscellaneous" file.

112. Mrs Preston made the point that when Mr Abenson had come to write to his clients with copies of the two wills he had written to them both together in the same letter even though they were separate clients. The letter is at page 351 and was dated 10 October 2012. Mr Abenson had not been aware of the deceased's illiteracy at the time; he had accepted in cross-examination that had he known about it, he would have used a different form of testimonium and attestation clause.

113. Mrs Preston emphasised that the burden of proof of knowledge and approval rested with the defendant, and that there had to be affirmative proof of this; here, she said, there was nothing to tip the scales.

114. She referred to paragraph 10 of Mr Abenson's witness statement where he had described the deceased as: "… a very firm person who knew exactly what he wanted."

When pressed in cross-examination, Mr Abenson had been unable to say how he had formed the view that the deceased was a firm person, or why he had believed that to be the case; he was said really to have had no impression of the deceased at all. It was wholly incredible that Mr Abenson had formed a view that the deceased was a firm man; he could point to nothing to support that view.

115. Mr Abenson had not discussed what the deceased had meant by leaving the two properties to charity. Had Mr Abenson pressed the deceased on that point, from the defendant's evidence it would appear that he would have been referred to the deceased's wife and sister in Yemen. Mr Abenson had accepted that he knew that they were not charitable objects so it was clear that Mr Abenson could not have pressed the deceased on that point.

116. Mrs Preston accepted that the deceased had been a clever and intelligent man, but his spoken English had been poor; people like that were said to learn very quickly how to cover up their deficiencies. Mrs Preston accepted that the deceased had known some English words, and he might have been able to give the impression that he was understanding; but that was not the same as knowing and understanding, still less of satisfying the burden of proof which rested on the defendant.

117. Mrs Preston said that the only constant in the defendant's evidence had been her wish to provide for herself and her children: that had been her aim in life; otherwise there was said to have been no consistency in her evidence on any point.

118. In her witness statement, at paragraph 25, the defendant had said that when she married her husband he had owned two properties in the United Kingdom. She then gave evidence at variance with that in cross-examination. Mr Green had accepted that the defendant's evidence on this issue had been inconsistent; but he had sought to attribute that inconsistency to a lack of recollection on her part after so many years. Mrs Preston submitted that that would not do because that very issue had been addressed in the transcripts of the meetings with the imam and representatives of the claimants which had taken place in or about July 2016, and which she had chosen to attach to her own witness statement.

119. The defendant was said to have put a spin on matters in her evidence; for example, the statement at paragraph 20 that she had invited the deceased's children to her wedding. In cross-examination it had transpired that she had invited only one sister, who was then living in Yemen.

120. Mrs Preston submitted that the defendant's evidence simply could not be believed. She was controlling and manipulative of the deceased; that control and manipulation was said to have increased as the years went by. First, the defendant had herself become more accustomed to life in England and her ability to communicate in English had increased. Secondly, her husband had been getting older and his health had been deteriorating. The deceased's reliance upon the defendant had kept increasing and the defendant was said to have encouraged that; particularly after his stroke, the deceased had not made decisions without the defendant's permission or encouragement. His other children had not been allowed to see the deceased alone and had been made to feel unwelcome; all that was said to have been done deliberately. It was said to be significant that not one of the claimants had ever heard the deceased speaking English at home.

121. The defendant's evidence about how she had come to acquire the money for all the properties she had acquired was wholly incredible; her answers were said to have been entirely inadequate and inconsistent. At the meetings with the imam she had said that she could produce documentary evidence as to the source of finance but she had never done so. It was said that the defendant consistently made assertions but she had never produced proof to back them up.

122. The defendant was described as cunning. Mrs Preston pointed out that it was only when I had suggested that the transfers of the three properties into joint names might have been in order to derive some tax advantage that the defendant was said to have latched onto that and adopted it. Mrs Preston submitted that the defendant said whatever best suited her at any particular time.

123. The true nature of the defendant was said to have emerged when she had admitted that she had spat in the face of the fifth claimant. She had produced no, and certainly no adequate, evidence of the genesis of the aide-memoir which had emerged from Abensons' files. She had not related what discussions had taken place, when they had taken place, or how they had come about; all she had said about it in her witness statement (at paragraph 58) was: "We discussed what we should include in our wills and what our priorities were. We also discussed making a power of attorney. I made a note of our discussions to show to Edward Abenson what we wanted." Mrs Preston submitted that there had been no discussions.

124. Mrs Preston emphasised that the defendant had not told anyone about her youngest son's disability for at least 12 months after his birth. She had said that that was because it

was her private business. Mrs Preston submitted that the defendant had just wanted to look after him; Mrs Preston referred to the defendant's further evidence that she had just wanted to look after her son herself. Mrs Preston submitted that all of the children respected and cared for each other and for their father, and that the defendant had just ignored their status as her son's half-brothers and half-sisters.

125. As to the state of the deceased's command of English, Mrs Preston submitted that the deceased had not understood English but had been able to cover it up. She instanced the reference to the evidence of K.H. Hamed, the third claimant's husband and the deceased's son-in-law, about the auction at which he had kept trying to continue to bid even though the bid was already with him and he had not understood the auctioneer explaining that to him.

126. Mrs Preston also referred to other evidence that the deceased had been unable to hold a conversation with a man over the telephone with whom the deceased had been involved in a car accident. Mrs Preston accepted that in all likelihood there had been some improvement in the deceased's command of English since 1973; but Mrs Preston could not accept that the deceased could have entered into any detailed conversation with anybody about the contents of the will in 2012. He would not have understood the details he was being told about the will although he may have given the impression that he understood them. He would not have understood if the will had been read out to him, even though it was not a long document. Mr Abenson had not explained to the court how the deceased had understood because he could not remember explaining the will to the deceased.

127. The attendance notes produced from Abensons' files were said not to show that the deceased understood English; very little of any positive value could be taken from any of them. When one looked at the indiscriminate references to the deceased, it was clear that they had been prepared sloppily and could not assist the court in deciding what had gone on at the time.

128. The discovery of the contents of the 1997 will was said to have come as shock to the claimants. Both the ninth and the thirteenth claimants had thought that the 1997 will had been invalidated by the later will. That was said to be a credible explanation, coming from lay people with no knowledge of the English law of probate; there had been no deliberate attempt to deceive or misrepresent the position in these proceedings. In any

event, the issue after the discovery of the 1997 will was precisely the same as before its discovery: the question was whether the 2012 will was valid or not.

129. In summary, Mr Abenson could give no reliable evidence as to what he had done; but in any event if he had indeed asked the deceased: "Do you understand this will?" the deceased would simply have said: "Yes" in order to cover up his inability to understand. Those were Mrs Preston's submissions.

130. It is now 1 o'clock; I proceed to break off. I will break off now until just after 2 o'clock, when I will conclude the judgment.

(Luncheon adjournment)

JUDGE HODGE QC:

F: The defendant's submissions

131. In his written opening, Mr Green had accepted, as I have previously explained, that, in this particular case, and because the deceased was illiterate and English was not his first language, the court would need to be satisfied, on all the evidence, that the deceased had known and approved the contents of his will at the time when he executed it. To be satisfied that the deceased knew and approved the contents of the will, the court must apply the single test laid down in *Gill v Woodall*. The court must be satisfied that the deceased both understood what was in the will at the time when he signed it and what its effect would be, and that it was in accordance with his wishes. In his written opening, Mr Green relied on the following evidence, as providing affirmative proof that the deceased did understand what was in the will and what its effect would be when he executed it, such that he did know and approve of the contents of the 2012 will.

132. First, the deceased gave his instructions for the will independently to Mr Abenson in a meeting that he attended with Mr Abenson on his own. Second, although English was not the deceased's first language, he had been living in the UK for nearly 40 years when he made the will, and his use and understanding of spoken English was not as poor as the claimants suggest. Their evidence, and that of their non-family witnesses, is said to relate primarily to the 1980s or early 1990s. The deceased had run a successful business, where he had been dealing daily with English-speaking customers and suppliers. Even when he made his 1997 will, in respect of which Mr Holroyd had taken the precaution of having it read back to him by an Arabic translator, Mr Holroyd had recorded, in the testimonium and attestation clause, that the deceased understands the language but has an imperfect knowledge of, and cannot read, the English language. By 2012, some 15 years later, Mr

Abenson was of the view that the deceased's knowledge of English was sufficient to enable him to give, and to understand, his instructions. The deceased's understanding of English had been sufficient to enable him to instruct Abensons in relation to a number of property and litigation matters from 2007 to 2009; to instruct a letting agent in relation to a number of properties in the period July 2014 to December 2015; to instruct a general contractor; and to instruct an electrician in relation to property repairs and maintenance.

133. Third, although the deceased and the defendant, as husband and wife, had discussed their testamentary intentions prior to seeing Mr Abenson, and the defendant had written them down, it was the deceased who decided to instruct Abensons; and there is nothing untoward or suspicious in the instructions or how they were given. The deceased had seen Mr Abenson alone for the purpose of giving his instructions for the will, and he saw him alone when he came to execute it. Fourth, after Mr Abenson had drafted the will, a further appointment was attended at Abensons Solicitors' offices. The deceased and the defendant attended together to execute their respective wills; but, again, Mr Abenson saw each of them separately to execute their wills. That is supported by the fact that Mrs Harris wrote down her occupation and address on the will executed by the defendant, but omitted to do so on the will executed by the deceased, and Mr Abenson mistakenly supplied his details in her place. That supports the view that they were executed on separate occasions.

134. Mr Green relies upon the fact that Mr Abenson had read the defendant's will to her and had explained what it meant, so that she was able to confirm that she understood it before she executed it. Mr Green, in his oral submissions, relied upon the evidence of the defendant in relation to the instructions for, and execution of, her will, as corroborating Mr Abenson's evidence in relation to the instructions for, and execution of, the will by the deceased. Mr Green pointed to paragraphs 59 to 61 of the defendant's second witness statement. The court pointed out to Mr Green that the defendant had not corroborated what Mr Abenson had said (at paragraph 12 of his witness statement) that he always asked the client to read their will before signing it, and always explained to them that once the will was signed, it becomes a legal document. Mr Green accepted that the defendant had not spoken to that, and he accepted that there was an anomaly there. However, he made the point that it is not unusual for there to be differences between witnesses when giving evidence of events that had taken place some years earlier: in this case, the second witness statement was made in December 2018 and thus a little over six years after the

making of the 2012 will. In the 2016 response to the *Larke v Nugus* request, Mr Abenson had confirmed, in response to question 16, that the will had been read back to the deceased prior to him executing it. Mr Abenson confirmed that that is what he would have done in relation to the will with the deceased; and that if he had had any concerns about the deceased's understanding of the will, he would not have allowed him to execute it.

135. Fifth, the 2012 will itself was straightforward and easy to understand, being a will under which the deceased appointed his wife as his executor, gave her two properties to be held for charitable purposes, and gave the rest of his estate to her. Mr Green, in closing, pointed to the fact that the handwritten note found in Abensons' files did not identify any executor for either will; it did not identify any guardian for the children; and it did not indicate, in the case of the deceased, who was to benefit from his will in the unlikely event that his wife were to predecease him. Those were all matters addressed in the 2012 will and were, therefore, matters on which Mr Abenson must have taken the deceased's instructions. It is, of course, conceivable that Mr Abenson approached the will of the deceased on the footing that he would have intended to do exactly the same as his wife. However, that is an assumption which I do not consider would readily be made by an experienced probate solicitor without further inquiry of the individual client.

136. Mr Green also made the point that if Mr Abenson had been in any way unclear as to whether the will truly represented the deceased's instructions, he would not have drafted the will; and that is said to show that the deceased had been able sufficiently to concentrate with Mr Abenson in relation to these matters. In the course of his oral submissions, Mr Green emphasised that one of the factors that has driven the approach of the claimants in this litigation is their conviction that the will was not in accordance with proper Islamic principles because it made no provision for the children of the deceased's two earlier marriages, and unfairly discriminated between them and the children of his marriage to the defendant. However, Mr Green makes the point that the deceased had made a will in 1997 which it is accepted on both sides is valid, and that that will itself had not accorded with Islamic principles. It had excluded nine of the deceased's children from his first two marriages; and the only provision it had made for any of his children of his third marriage had been to leave them his half interest in a jointly-owned property. Mr Green emphasises that, in 1997, the deceased had clearly chosen to make a will which did not accord with Islamic principles. Mr Green invites me to find that the deceased's

knowledge and understanding of English in 2012 was sufficient to enable him to communicate with Mr Abenson, to give instructions for his will to Mr Abenson, and to understand what the will provided when the will was read back to him.

137. Mr Green also invites me to find that the deceased had not been affected, on a long-term basis, in any material way by the stroke from which he had suffered in 2008. He invites me to find that the deceased had recovered almost entirely, both mentally and physically, apart from being left with a weakened left arm. He had been allowed to drive again within a period of about 12 months. The ninth claimant had accepted that he had continued to drive, although he commented that his driving had been equally as bad after as it had been before his stroke. Mr Green accepted that the deceased had gradually become weaker, but that was part of the natural ageing process. At the time he made his 2012 will, he was, after all, 76 years of age. Mr Green invited the court to find that the claimants had exaggerated the effect of the stroke.

138. Mr Green submitted, in closing, that it was unlikely that the defendant had manipulated the deceased, either generally or, in particular, in relation to the will. There had been an arranged marriage when she was 22 and a stranger to the United Kingdom. Her husband had been 60. Over the next 20 years, they had built a marriage which had lasted throughout that time, and they had brought up five children. I should regard any awkwardness between the defendant and the claimants as being due to their disapproval of the marriage and also what they perceived as the unfair treatment of the deceased's earlier wives.

139. In closing, Mr Green pointed to three issues raised by Mrs Preston as to the credibility of the defendant's evidence. Mr Green accepted that the defendant had given varying evidence about the number of properties owned by the deceased at the date of the marriage. He indicated that that was simply due to confusion or a lack of recollection. I have already referred to Mrs Preston's valid point that this was something that the defendant had had ample opportunity to address, since it had been raised at the time of the various meetings with the imams in or about July of 2016.

140. Mr Green also accepted that the defendant had been challenged in relation to the Inheritance Tax return that she had completed. In box number five, she had stated that there was no property abroad, when she had known that he had both real property and cash at the bank in Yemen. Secondly, she had claimed the surviving spouse exemption. Mr Green made the point that the Inheritance Tax return would have been prepared by

Abensons, although he accepted that it would have been prepared on the basis of information that she had provided. Insofar as the overseas property is concerned, Mr Green made the point that the defendant's knowledge of the deceased's assets in Yemen had been limited, and that the income from them had ceased when her husband passed away. She had understood that those assets would be for the families of the first two wives.

141. Mr Green submitted that the claim for the surviving spouse exemption should not properly be treated as a matter going to the defendant's credibility. He invited me to make no finding on the validity of the marriage between the deceased and the defendant in Yemen in 1996. He made the point that it has never been regarded as an issue in these proceedings. No evidence had been produced as to the deceased's domicile in 1996, when the marriage had taken place, even though it is quite clear that everyone regarded him as having acquired a domicile in England and Wales by the time of his death. Mr Green pointed out that, as a matter of Yemeni law, the defendant was to be regarded as the deceased's wife, and that, both in the 1997 and the 2012 wills, she had been named as the deceased's wife. As far as they were concerned, they had always been a married couple. In any event, this case did not turn on whether the marriage between the deceased and the defendant had been lawful. In the event, the claim to the surviving spouse exemption had, in view of the size of the estate and the two charitable gifts, resulted in no less tax being paid than should have been, even if the surviving spouse exemption had not been claimed. Mr Green submitted that those two matters were technical issues, on which the defendant can be forgiven for not properly understanding how the Inheritance Tax return was to be completed and should not affect the credibility of her evidence in general.

142. I would accept those submissions, just as I accept the submission of Mrs Preston that, although the ninth and 13th claimants incorrectly completed their statements of testamentary scripts, those errors should not be held against them. However, as I have indicated, when reviewing the evidence of the claimants, and also the defendant, there are other respects in which I consider that the reliability and credibility of their evidence is open to serious question.

143. On the execution of the wills, Mr Green stressed that Mr Abenson had read through the 2012 will to the deceased and had ensured that he had understood what it was saying, in substance. Mr Abenson would not have allowed the deceased to execute that will if he had felt in any way that the deceased did not understand what it said. Mr Green

emphasised that that will was relatively straightforward. It had left a gift of two properties to charity and the remainder of the estate to the defendant, as the deceased's third wife. That reflected the written instructions in the manuscript note at page 352. The fact that the deceased, unknown to Mr Abenson, may have had a different understanding as to the meaning of charity, does not mean that the will did not reflect his wishes, as expressed to Mr Abenson. There was simply no evidence that the deceased had ever explained that he had wanted anything to go to his sister or his first wife in Yemen. The gift to charity was consistent with one of the five pillars of the Islamic faith, and the gift to charity was consistent with what a number of the witnesses had spoken to about the deceased's charitable nature. The fifth claimant had said that the deceased was very charitable; the eighth claimant, that he had donated to charity; the deceased's son-in-law, K. C. Hamed, had also said, both in his witness statement at paragraph 21 and confirmed in cross-examination, that the deceased had been a charitable person. Those were Mr Green's submissions.

G: Conclusions

144. I have borne the submissions of Mrs Preston and Mr Green firmly in mind. Having done so, I have concluded that the claimants have exaggerated the effect of their late father's stroke. In any event, the transfer of three properties from the deceased into the joint names of himself and his wife had taken place some three years before the stroke, in 2005, and that transfer was consistent with property purchases which had been made in the wife's name, although, as I find, using the deceased's money since almost the very start of their marriage. Those purchases and those transfers were consistent with a wish, on the part of the deceased - at a time when, I find, he was strong willed and determined and resolute - to ensure that his wife and their children would have some property, in circumstances where his 1997 will made very limited provision for either the defendant or the children of their marriage.

145. I find that the deceased's knowledge and understanding of English was, as Mr Green submits, sufficient to enable him to converse with Mr Abenson, to give him instructions, and to understand what the will was saying. I find that, on the balance of probabilities, and consistently with Mr Abenson's usual practice, he did, as he said at paragraph 12 of his witness statement, ask the deceased to read the will before he executed it, and he explained to him that once it was signed, it became a legal document. Since Mr Abenson said that, had he known the deceased was illiterate, he would have altered the testimonium

and attestation clause to reflect that fact, it must follow that the deceased did not tell Mr Abenson that he could not actually read the will; but I also find that, in accordance with Mr Abenson's evidence, he had read the will back to the deceased and ensured that the deceased had understood and agreed its contents. Mr Abenson had earlier been able to take instructions from the deceased as to the contents of the will and, in particular, to take instructions as to the identity of the executrix; the provision to be made for the guardianship of the five children in the event, unlikely though it was, that the deceased should be predeceased by his third wife; and also as to what was to happen to the residue of the estate in that event: namely, that it was to go to the five children of the deceased's marriage with the defendant. The will was, as Mr Green says, a relatively simple one, and I am satisfied that it was explained to him, and that he understood it. That is supported by two documents.

146. The first, as identified by Mr Green, is the testimonium and attestation clause in the earlier 1997 will. Mr Holroyd clearly had taken considerable care in drafting the terms of that clause. Mr Holroyd is well known as a reputable and competent solicitor, who has served as the President of the Law Society. He recorded that the deceased, as long ago as 1997, 15 years before the 2012 will, understood the English language, but had an imperfect knowledge of, and could not read, the English language. He took the precaution – which Mr Abenson did not, because he did not know of the deceased's illiteracy – of ensuring that an interpreter was present and that the interpreter interpreted the will to the deceased. As I say, Mr Abenson did not; but I am satisfied, as Mr Holroyd certified, that the deceased understood the language sufficiently to understand what was being read to him and Mr Abenson's explanation. It would have been much better had Mr Abenson specifically invited the deceased to explain to Mr Abenson what he understood by the will. That, in my judgment, would have been good practice; but, like the Golden Rule, it is recommended practice and not mandatory.

147. The second document to which I attach importance is one of the attendance notes which were found in Abensons' miscellaneous file. It is the attendance of the 5th of June 2007. Although it begins: "Attending Mrs Dhalei in the office", it is quite clear that in fact it was Mr Dhalei who was attended, from the use of the male pronoun and the fact that Mr Dhalei is referred to as having an old power of attorney. Mr Dhalei is mentioned by name on a number of occasions. The writer is said to have checked with the deceased just how his name was interpreted, because the power of attorney was said to be in the

name of someone by the name of Kassim. That led Mr Dhalei to give his full name: Abdullah Nagi Kassim Dhalei. He then gave an explanation of the significance of each of those names. The first name was said to be Mr Dhalei's personal name; that was Abdullah. The second name, Nagi, was said to be that of his father. The third name, Kassim, was said to be the name of the deceased's grandfather; and Dhalei was said to be the village in which he had been born. The writer of the attendance note then records that the deceased proceeded to give his wife's full name and to identify them as, respectively, the personal name, the father's name, the grandfather's name and, lastly, the great-grandfather's name, of his wife. I asked the ninth claimant, at the end of his evidence, about the significance of the deceased's names, and he confirmed that the fourth name, Dhalei, was the name of the village from which his late father came; and that the second name, Nagi, had been that of the ninth claimant's grandfather and thus of the deceased's father. He was unable to explain where the name, Kassim, came from. That was corroboration of what had been recorded in the attendance note.

148. Clearly, the deceased had been able to communicate to that extent with the writer of the attendance note back in 2007, some 10 years after the 1997 will and five years before the 2012 will. That is corroboration of the deceased's command of English. I note that the 6th February 2007 attendance note upon both the deceased and the defendant ended with the writer recording that both of them had seemed to understand what he was saying, and he had then added, "… particularly Mrs Dhalei", the defendant. But even though Mrs Dhalei's understanding may have been greater, that apparent understanding was said to extend also to the deceased; and, as Mr Green pointed out in his oral closing, any lack of understanding may have related to the content of the advice, rather than what was actually being said.

149. I remind myself that the burden of proof of want of knowledge and approval is on the defendant who seeks to propound the will; but I am satisfied, on the evidence, that she has proved that the contents of the 2012 will had been brought home to the deceased. I therefore dismiss the claim. The result is that the existing grant of probate in common form will stand. If I am asked to by Mr Green, I will also pronounce in solemn form of law for the validity of the 2012 will, as the defendant seeks in her counterclaim. So that concludes this judgment.

MR GREEN: Thank you, my Lord. My Lord, yes; I would ask for that declaration to be made, as sought in the counterclaim ---

JUDGE HODGE: Yes.

MR GREEN: --- so that there is no dispute about that matter.

My Lord, can I just raise one issue, potentially, in case this matter goes any further, which may be an inaccuracy of fact in your Lordship's judgment, and it simply relates to the three joint properties that you referred to.

JUDGE HODGE: Yes.

MR GREEN: I think in your judgment, you indicated that those properties had been transferred from the deceased into the joint names of the deceased and the defendant.

JUDGE HODGE: I thought that that was the case.

MR GREEN: No. In fact, the documents show they were transferred by the defendant ---

JUDGE HODGE: Oh; right.

MR GREEN: --- into the joint names of the deceased and the defendant.

JUDGE HODGE: Right.

MR GREEN: So, she transferred properties which were in her sole name into joint names at that point.

JUDGE HODGE: Right.

MRS PRESTON: That was where the question of whether that was done for tax reasons was raised by your Lordship, if your Lordship recalls, to reduce her estate. So a trans ---

JUDGE HODGE: Well, actually, I thought it was the other way round.

MRS PRESTON: Oh.

JUDGE HODGE: It was to reduce his estate; so ---

MRS PRESTON: No; it was to redu ---

JUDGE HODGE: No; it was a mistake on my part.

MRS PRESTON: Yes.

JUDGE HODGE: But it doesn't affect ---

MRS PRESTON: No.

MR GREEN: I don't think it affects ---

MRS PRESTON: No.

JUDGE HODGE: --- the ---

MR GREEN: --- your judgment, but ---

JUDGE HODGE: --- the reasoning or the ---

MR GREEN: No.

JUDGE HODGE: --- substance of it.

MR GREEN: Indeed. Just so that that is clear. My Lord, subject to that ---

JUDGE HODGE: I mean, in the light of my findings ---

MR GREEN: Yes.

JUDGE HODGE: --- they would have been purchased by the defendant with money derived ---

MRS PRESTON: Yes.

JUDGE HODGE: --- from the deceased ---

MR GREEN: Indeed.

MRS PRESTON: Yes.

MR GREEN: That may well be.

MRS PRESTON: Yes.

JUDGE HODGE: --- in the first place.

MR GREEN: Indeed, my Lord. As I say, I don't ask you to push in further than that.

JUDGE HODGE: No.

MR GREEN: It is simply that it is recorded that they were transferred from her to joint names.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.