

THE HIGH COURT

PROBATE

[2022] IEHC 417

**IN THE MATTER OF THE ESTATE OF EILEEN ROSE TURNHAM JONES
(ALSO KNOWN AS EILEEN TURNHAM-JONES) LATE OF 60 CARDINAL
AVENUE, MORDON, SURREY, SM4 4Z, ENGLAND**

AND

IN THE MATTER OF THE SUCCESSION ACT 1965

AND

**IN THE MATTER OF AN APPLICATION BY TRACY ANN KENCH-
ANDREWS AND PETER ROY**

JUDGMENT of Ms. Justice Butler delivered on the 1st day of July, 2022

Introduction:

1. This judgment deals with an application made in the non-contentious Probate list to which all of the beneficiaries of the deceased's estate under a will executed by her in the United Kingdom on 25th October 2011 have consented. Notwithstanding the lack of objection from those who might otherwise stand to benefit if the application were disallowed, for the reasons set out below I find myself unable to accede to the application.

2. In brief, the application arises because prior to executing her UK will the deceased executed a will in Ireland on 1st September 2011 which disposed of her Irish estate. Her assets in Ireland consisted solely of a holiday house at Shillelagh, in

County Wicklow which she left to the second applicant, a neighbour and friend. The second applicant was also appointed the sole executor of her estate. The subsequently executed UK will contains a revocation clause at clause 1 which purports to revoke “*all earlier wills and testamentary dispositions*”. The application is brought jointly by one of the executors to her UK will to whom a grant of probate was issued in the UK on 3rd August 2016 and the executor under the Irish will. Two reliefs are sought. The first is a declaration that the Irish will was not revoked by the subsequent UK will and the second is an order granting the executor named in the Irish will liberty to extract a grant of probate in respect of that will.

3. In order to understand the legal issues which arise it may be useful at the outset to look at the terms of the two wills and the circumstances in which they were executed by the deceased, insofar as the circumstances are known to the court.

4. The first in time is the Irish will which was drawn up on behalf of the deceased by a solicitor and executed in that solicitor’s office with the solicitor and his legal executive acting as witnesses. The will is a relatively straightforward, single page document. It describes the deceased as being “*of*” the address of the holiday property in Shillelagh although there seems no doubt that the deceased was both resident and domiciled in the UK for her whole life. It then contains the following recital: -

“...I hereby revoke any testamentary dispositions in respect of property owned by me in the Republic of Ireland heretofore made by me. I declare that this will relates solely to my dwelling house in Ireland.”

This is followed by a bequest of the dwelling house to the second applicant and his appointment as executor. The specific intention of the deceased to benefit the second applicant is clear not just from the gift itself, but from the fact that in the event the

second applicant did not survive the deceased for thirty days, the property was left in equal shares to four of his nieces. The will then concludes, before the necessary formalities: -

“In all other respects I confirm my English will.”

There is no issue that the execution of this will complies with the requirements of s. 78 of the Succession Act and that it is a *prima facie* valid will (subject to one concern which is considered below). The issue is whether it was subsequently revoked by the execution of the UK will.

5. The UK will is a longer and more complex document. It was also prepared on the deceased’s behalf by a firm of solicitors and the witnesses appear to be two members of staff of that firm leading to an inference that it was executed in the solicitor’s office. The general structure of the will is that it appoints two individuals, including the first applicant, to be executors and trustees. The deceased then gifted her personal chattels to the trustees as beneficial legatees. The terms *“personal chattels”* has a specific meaning in the UK under s. 55(1)(x) of the Administration of Estates Act, 1925 which, as it happens, was significantly updated in 2014 subsequent to the execution of this will. It does not include what are generally the more valuable assets likely to be held by a person such as real property, cash, shares, securities, investments *etc.* The bulk of the deceased’s estate was described in the will as her *“residuary estate”* and the trustees were directed to hold this estate in specific percentage shares on behalf of seventeen named residuary beneficiaries. In reality, the residuary gift is the main gift under the will.

6. The level of detail contained in the UK will regarding the identity of the beneficiaries is impressive with specific stipulation being made as to which of the beneficiaries’ descendants were to benefit in the event of the beneficiary predeceasing

the testator. In contrast the actual content of the deceased's residuary estate, whether that comprised real estate or otherwise, is not described at all. Instead, under clause 5 of the will, the deceased's estate is defined so as to mean "*all my property of every kind wherever situate*". There are some subclauses to clause 5 but these do not alter the fundamental premise that the will relates to the entire of the deceased's property no matter where that property is located.

7. Thus, on the face of it the deceased's UK will, executed subsequent to her Irish will, revokes the earlier Irish will and applies to the entire of her estate including her property in Ireland. The question raised on this application is whether the circumstances in which the two wills were executed are such that the court can be satisfied that, notwithstanding the express terms of the UK will, in executing it the deceased did not intend to revoke the will.

Revocation of wills

8. Two statutory provisions have been cited to the court as being relevant to this question. The first is s. 85 of the Succession Act 1965 which governs the revocation of wills. Apart from the automatic revocation of a will on the subsequent marriage of a testator (unless the will was made in contemplation of the marriage), dealt with in s. 85(1), s. 85(2) sets out the formalities required for a valid revocation of a subsisting will. It provides: -

“(2) Subject to subsection (1), no will, or any part thereof, shall be revoked except by another will or codicil duly executed, or by some writing declaring an intention to revoke it and executed in the manner in which a will is required to be executed, or by the burning, tearing, or

destruction of it by the testator, or by some person in his presence and by his direction, with the intention of revoking it.”

9. The terms of the revocation clause in the UK will – “*I revoke all earlier wills and testamentary dispositions*” – and the fact that it is contained in another duly executed will is sufficient in principle to ensure the revocation of the earlier Irish will. However, the applicants point to a number of authorities cited in the judgment of Baker J in *Re Courtney Deceased* [2016] IEHC 318 to the effect that the presence of a revocation clause in a will is not necessarily determinative if it can be shown that the testator did not have knowledge of or approve the intended revocation. Relying on the judgments in *Re Keenan* [1946] 80 ILTR 1 and *Re Phelan* [1972] Fam 33, Baker J stated as follows: -

15. *Implicit in this dicta is that a clear revocation clause, while it might raise a presumption that a testator intended to revoke all previous testamentary documents, could not of itself, absent the knowledge and approval of the testator, do so if the necessary animus revocandi was not present. Also implicit is that the onus of establishing that the testator did not have an intention to revoke is on the person who so asserts...*

.....

21. *The case was answered, then, by reference to the question of the ‘knowledge and approval’ of the testator, to borrow the language of MacDermott J in Re Keenan, and the court considered extrinsic evidence to construe the documents.*

‘Accordingly, I hold, that the testatrix was not bound by this mistake of the draftsman which was never brought to her notice. The discrepancy between her instructions and what was in the codicil was to all intents and purposes total and was never within her cognisance.’

22. *I adopt that approach and consider that the correct approach of the court in the present case is to consider whether the testator knew, approved of and understood the full effect of the revocation clause in the will made in England in 2013.”*

These latter two paragraphs deal with the concept of a drafting error and whether a testator should be bound by a draftsman’s mistake of which the testator was not aware. The drafting error or mistake in this context is usually the inclusion in the will of formal clauses, such as a revocation clause, the full significance and effect of which might not be understood or appreciated by the testator.

10. I accept in principle that notwithstanding the existence of a *prima facie* valid revocation clause in a duly executed subsequent will, it is open to the applicants to show that this revocation clause was not intended by the testator to capture her earlier Irish will. This could be shown by establishing that the testator was unaware of or did not approve of the revocation clause in the subsequent UK will or that it was a drafting error in that its inclusion in the subsequent will by the testator’s solicitor was without her express instructions or without her understanding and appreciating the consequences of it. However, it is important to bear in mind that not only do the applicants bear the onus of proof in this regard but that the onus is a heavy one. As explained by Herbert J in *McCormack v. Duff* [2012] IEHC 285 (at p.28): -

“There is a very heavy burden on the plaintiff executors ... to show that this revocation clause did not revoke all previous testamentary dispositions. They must satisfy me that there is sufficient evidence that the late A.S. did not intend to revoke the Irish will made prior to the Italian will.”

Extrinsic evidence

11. The second statutory provision of potential relevance is s. 90 of the Succession Act 1965 which deals with the admissibility of extrinsic evidence as to a will. It provides: -

“Extrinsic evidence shall be admissible to show the intention of the testator and to assist in the construction of, or to explain any contradiction in, a will.”

12. There is some ambiguity as regards the extent to which extrinsic evidence should be admitted to show that the testator did not intend what her will clearly states. The extent to which extrinsic evidence can be relied on to show the intention of a testator *simpliciter* as distinct to the intention of the testator as regards an apparent contradiction in the will or a clause in the will that is otherwise difficult to construe has been teased out in a number of cases (see *Bennett v. Bennett* (High Court) Unreported 24th January, 1977), *Rowe v. Law* [1978] IR 55 and *Re Collins Deceased*, *O’Connell v. Bank of Ireland* [1998] 2 IR 596). The concluded view, endorsed twice by the Supreme Court, is that *“Section 90 allows extrinsic evidence of the testator’s intention to be used by a court of construction only when there is a legitimate dispute as to the meaning or effect of the language used in the will. In such a case ... it allows the extrinsic evidence to be drawn on so as to give the unclear or contradictory words in the will a meaning which accords with the testator’s intention as thus ascertained. The section does not empower the court to rewrite the will in whole or in part.”* (per

Henchy J in *Rowe v. Law* (above) at para. 35 subsequently affirmed in *Re Collins, deceased*, *O'Connell v Bank of Ireland*).

13. This sits somewhat uneasily with the willingness of the court to admit and consider extrinsic evidence in both *McCormack v. Duff* and in *Re Courtney*. In those cases, as here, there was really no legitimate dispute as to the meaning or effect of the language used in the will. Instead, the issue was whether the testator had intended that the revocation clause, the meaning of which was otherwise clear, would apply to an earlier will. In *McCormack v. Duff*, the earlier will was an extremely lengthy and detailed document prepared by the testator's Irish solicitors in respect of which the testator had received additional advice from accountants and tax specialists. It concerned an estate with a value in excess of €10m and included twenty-five specific legacies and established four trusts. The later will which included the revocation clause was executed in Italy and dealt only with the disposition of holiday property owned by the testator located in Italy. It contained no residuary clause and if the revocation clause were held to have revoked the earlier Irish will, the testator would have died wholly intestate as regard his valuable Irish estate. In *Courtney*, the testator had also executed an Irish will with the benefit of legal advice to which he had subsequently added four validly executed codicils, again all prepared with the benefit of legal advice. Shortly before his death he executed a homemade will on a pre-printed form which dealt with a property and certain bank accounts in the UK. That will contained a revocation clause but no residuary clause. Again, if the pre-printed revocation clause were held to have revoked the Irish will and its four codicils, then the testator would have died intestate as regards his Irish property.

14. The admission of extrinsic evidence in *McCormack v. Duff* followed a somewhat circuitous route. Having considered some of the circumstances of the

testator and his family and the circumstances and content of the two wills, Herbert J. was satisfied that there was an uncertainty as to what the testator intended to revoke which justified the admission of extrinsic evidence. He put the matter as follows at p.30 of the judgment: -

“Section 90 of the Succession Act, provides that extrinsic evidence is admissible to show the intention of the testator and to assist in the construction of or to explain any contradiction in a will. On the face of the Italian will of the late A.S. there is no apparent uncertainty as to the general revocation clause. However, because of the matters which I have identified and considered an uncertainty emerges as to what he intended to revoke by that clause. In such circumstances, even adopting a conservative and literalist approach to the interpretation of s. 90 of the Succession Act, I find that I am entitled to have regard to direct or consequential evidence of the circumstances surrounding the making of the Italian will by the late AS. (See for example, In the Estate to Wayland [1951] 2 AER 1041 at 1043 F: this is a decision of the Probate Divorce and Admiralty Division of the High Court in England in which the facts gave rise to similar issues and the applicable law was essentially the same as in Ireland). This evidence of surrounding circumstances only confirms me in the view which I would have taken in any event, having regard to the other matters which I have already addressed, that the late AS intended the general revocation clause in his Italian will to be limited to revocation of and prior wills made by him in Italy”

It is hard to read this passage other than as meaning that even where there is no apparent uncertainty on the face of a will, an uncertainty identified on the consideration of extrinsic evidence can be relied on to justify the admission of

extrinsic evidence. That does not seem to me to be in keeping with the *Rowe v. Law* and *O'Connell v. Bank of Ireland* jurisprudence which requires the language of the will to give rise to a contradiction or difficulty in the construction of the will itself which requires the admission of extrinsic evidence to establish the intention of the testator in respect of those matters.

15. The route adopted in *Re Courtney* was more straightforward. Baker J relied on the proposition that the exercise of revoking a will must be accompanied by an intention to revoke the will and the consequent entitlement of the applicant to adduce evidence to show the absence of an *animus revocandi* as regards the particular will. The line is, however, a fine one. Were it not for the conclusions I have reached on the evidence before me, it might have been necessary to consider this matter in greater detail. Instead, I have considered all of the evidence which was adduced on behalf of the applicants *de bene esse* and have reached the conclusions set out below which obviates the need for me to consider in greater detail the extent to which the difficulty in issue arises because of the language used in the will or only when extrinsic evidence is considered in conjunction with the language in the will.

Application to the Facts of this Case:

16. The evidence in this case is relatively thin. The court knows relatively little about the extent of the testator's estate in the UK, save that the grant of probate shows her UK estate was valued at just over £500,000 in 2016. The court knows nothing about the circumstances in which the testator came to be the owner of property in Ireland nor, since it is described as a holiday property, the amount of time she spent in this jurisdiction or the extent of the ties she may have formed here. The testator's death certificate shows that she died in the UK on the 11th December 2014 at the

relatively young age of 69, that she had been married at some stage (it is not clear if she was widowed or divorced) and that, prior to her retirement, she had been a human resources manager. She had family in the UK, the informant in the death certificate was her sister and the first applicant here a niece.

17. More concerning, given that the wills in issue on this application were made only three years earlier, one of the causes of death listed on the death certificate is “*severe vascular dementia*”. Whilst the progress of any form of dementia will vary from person to person, the description of the vascular dementia as “*severe*” suggests it was likely present for some time. As vascular dementia frequently affects decision making, the Probate Office in Ireland would generally require to be satisfied as to the testator’s testamentary capacity before issuing a grant of probate in respect of a will executed at a point in time when the testator was likely to have been suffering from that condition. There was no medical evidence adduced on the application and no evidence from either of the solicitors involved in drawing up the wills as to the testator’s capacity or the circumstances in which instructions were taken from her. The court was told that no issue had been raised in this regard by the equivalent of the Probate Office in the United Kingdom when granting probate to the first applicant in 2016. However, were I making an order granting the second applicant liberty to apply for grant of probate in this jurisdiction, this would be a matter of concern to me.

18. No evidence has been forthcoming from either of the solicitors responsible for drawing up the wills in 2011. The applicants’ solicitor has contacted the firms involved but to little avail. The Irish solicitor, who has since retired, has no recollection of the testator and no notes of her instructions. Consequently, the court does not know if the testator was otherwise known to the solicitor, whether they had professional dealings prior to the drawing up of this will, the extent of the instructions

given by the testator nor when those instructions were given. The will expressly confirms the testator's UK will but, as the deceased had a previous UK will dating from 2003, the reference to her UK will does not serve to distinguish between that previous will and the subsequently executed will. In fairness to the Irish solicitor, although the will is brief, it was carefully drafted so as to distinguish between the testator's Irish and UK estate and, in particular, care was taken to ensure that the revocation clause in the Irish will would not operate so as to revoke any will dealing with the bulk of her estate in the UK. Had the UK will been drafted in similar terms, then the difficulties which led to this application would not have arisen.

19. The approach taken by the UK solicitors to the applicants' solicitor's requests for assistance was, unfortunately, unhelpful. Initially, the UK solicitors were prepared to do no more than to provide formal documentation and to contact the beneficiaries under the UK will in order to secure their consent to this application. Apparently, the solicitor who drafted the UK will has also since retired and the firm in which that solicitor worked has merged with another firm who now hold the relevant files. Neither the original solicitor nor any solicitor in the successor firm were prepared to swear an affidavit so as to put the instructions given by the testator in relation to her UK will before the court. This has potentially serious consequences. In the cases dealing with drafting errors discussed by Baker J. in *Re Courtney*, it is clear that the most common way in which a drafting error can be identified is by pointing to a discrepancy between the testator's instructions and the contents of the will. In the absence of any evidence as to the testator's instructions, the court cannot readily conclude that there was a discrepancy between what she asked her solicitors to do on her behalf and what they actually did.

20. This matter was heard by the court on two separate dates. It was adjourned after the first hearing in order to allow the applicants' solicitor to make further inquiries of the UK solicitors as to a number of matters. The correspondence which ensued was somewhat more helpful than the original approach adopted by the UK solicitors. An affidavit was sworn by the applicants' solicitor exhibiting this correspondence and, in particular, a letter from the partner in the UK firm of solicitors currently in charge of the relevant department. Having reviewed the relevant file, the writer of the letter indicated that work on the drafting of the testator's will began in June 2011 and was intended to update and replace an existing will which had been made in October 2003. The finalisation of the English will was delayed for reasons which are not relevant to the issues currently before the court. A draft will was sent to the testator on 5th July 2011 but, for various reasons, she was unable to attend her solicitor's offices to execute the will until 7th October 2011. Interestingly, the will was executed on that date but subsequently required correction as a result of which it was re-executed on 25th October 2011.

21. Apparently, from his review of the files, the writer was satisfied that the testator had not referred to her property in Ireland and, in the writer's view, as the Irish will did not exist at the time the instructions were taken, the testator "*could not have formed any intention to revoke the Irish will*". As this letter was received very shortly before the date for the hearing, the author did not swear an affidavit confirming these matters. However, given that the letter emanates from a solicitor, I was prepared to treat the contents of the letter as if they had been deposed to an affidavit rather than imposing a further adjournment and the additional costs that would entail on the applicants.

22. This letter suggests that instructions were given by the testator in respect of both wills contemporaneously. However, as it is not known when the testator gave instructions for her Irish will nor whether the Irish will replaced an earlier Irish will, I do not think it can be stated with the level of confidence assumed by the author of the letter that the testator could not have formed any intention to revoke the Irish will because the instructions were given for the UK will prior to the execution of the Irish will. The Irish will includes a revocation clause relating to “*any testamentary dispositions in respect of property owned by me in the Republic of Ireland heretofore made by me*”. This could refer to earlier wills dealing with her Irish property executed in either Ireland or the UK. In the absence of evidence as to the existence (or non-existence) of an earlier Irish will, in my view it is not possible to safely draw the conclusion suggested. Significantly, by the time the testator came to execute her English will, she had already executed an Irish will which draws a careful distinction between her Irish and her UK estates. It is almost inconceivable that that will could have been drawn up and executed by her without her Irish solicitor explaining the significance of having different wills applicable to her assets in different jurisdictions. In light of the terms of her Irish will, it is more difficult to conclude that she would have been unaware of the significance of the distinction – and the need to express her intentions clearly, as was done on the face of the Irish will – if she intended the UK will to apply only to her assets in the UK.

23. Further, I am conscious that in this case, the court is not dealing solely with the intended scope of a revocation clause which might be regarded as one of the more formal elements of the will. In addition to the revocation clause, the UK will contains a clause defining her estate the subject of the will and expressly stating that it applies to all of the testator’s property wherever situate. As far as the court is aware, the

testator only had property in Ireland and in the UK, and, consequently, the only logical meaning to be ascribed to that clause is that the testator intended her UK will to apply to her property in Ireland as well as in the UK. In normal course, where a client attends a solicitor's office for the purposes of signing a will, the will is read through to the client and the solicitor ensures both that the client understands the terms of the will and has sufficient capacity to execute the will. In this case, the UK will was executed by the testator twice, apparently involving two attendances at her solicitor's office. In those circumstances, I find it very difficult to draw an inference that the testator did not understand the meaning or effect of either the revocation clause or the clause defining the scope of her estate, both of which are drafted in relatively straightforward language.

24. In the absence of evidence from the solicitors responsible for the drawing up of the wills, the only other evidence before the court is that of the first applicant who is a niece of the deceased. She is firm in her belief that the deceased intended the Irish will and the UK will to have separate validity and effect. However, the evidential basis for that belief is not strong. At its height, it seems that the first applicant was close to her late aunt and assisted her in what are described as "*her business affairs in their entirety*". It is not clear to the court exactly what this means. The deceased was retired and prior to her retirement seems to have been in employment as a human resources manager. It may be that the reference to her "*business affairs*" means no more than the management of her routine finances, but the applicant does not explain this. Further, in circumstances where the deceased had severe vascular dementia at the time of her death, there is a serious issue as to whether she was already suffering from some form of that disease three years earlier when she executed her will. Consequently, I do not think the court can act on the basis of the first applicant's

assertion of the deceased's intention solely on the basis of this evidence. The first applicant also states that she was "*strongly involved*" with regard to the deceased's instructions to both her English solicitors and her Irish solicitors. Again, no further detail is given as to what this means. The first applicant does not state that she attended with the deceased at her consultations with either firm of solicitors or how she might have been otherwise involved in the instructions given. Again, I am treating this evidence with particular caution because of the possibility that the deceased was suffering from some form of vascular dementia at the time she gave those instructions. Finally, the first applicant avers that the deceased and the second applicant were close friends and neighbours and that she intended "*over a great number of years*" that he should inherit her Irish property. As previously noted, the court is not aware whether the deceased had a previous Irish will and no indication is given as to how that intention was expressed over the period of time referred to. The second applicant has not sworn an affidavit and, apart from the fact that he is a neighbour of the deceased's holiday property, the court knows nothing about their relationship.

25. The contrast between the facts in this case and the two cases upon which the applicants rely (*McCormack v. Duff* and *Re Courtney*) are striking. In both of those cases, the earlier will was clearly the far more detailed and comprehensive document by which both the deceased intended to dispose of the vast majority of their estates. The subsequent wills were discrete, disposed only of specific items of property and did not contain residuary clauses. The effect of treating the revocation clause in the subsequent wills as having revoked the earlier wills would have been, in both cases, that the estate of the deceased would have largely fallen to be distributed on intestacy in circumstances where it was clear that neither deceased intended to die intestate.

Here, the detailed and extensive distribution of the testator's estate is effected through the later will. The earlier will deals only with a specific item of property. Moreover, the later will in its express terms encompasses the property which is the subject of the earlier will. Therefore, if the revocation clause in the later will is regarded as validly revoking the earlier will, the property dealt with in the earlier will does not fall into an intestacy but falls to be distributed in accordance with the wishes of the testator as set out in the later will.

26. Further, in each of the two other cases, there was extensive evidence available to the court from the solicitors who had drawn up the earlier wills. Indeed, in *McCormick v. Duff*, evidence was also available from the Italian lawyer who prepared the Italian testamentary document. Therefore, the court had some certainty as regards what those lawyers understood they were dealing with and, more importantly, not dealing with when drafting testamentary documents to give effect to the intention of their clients. In the context of *Re Courtney*, it is easier for a court to infer that a testator did not fully understand, approve of or intend to incorporate a clause in a will which is contained in a pre-printed form and on which the testator does not receive legal advice. It is more difficult to draw that inference in the circumstances of this case where the UK will was professionally drawn up by a solicitor and executed by the testator in the solicitor's office.

27. In essence, in this case the court is faced with an absence of evidence from any of the lawyers involved in drawing up either of the wills. The letter from the firm of solicitors in the UK currently handling the deceased's estate was not written by the solicitor who drew up the will. Rather, it was written by a solicitor having read the relevant file, which file was not made available to the court. The only evidence before the court suggesting that the deceased did not intend to revoke her Irish will is the first

applicant's belief as to her late aunt's intentions. Although she is clearly very strongly of the belief that her aunt intended to have two separate wills, there is little actual evidence available to support that belief. This is not in any way a criticism of the first applicant and I note that, far from benefiting from this application, if the application were to be allowed, the first applicant along with the other beneficiaries under the UK will would all lose slightly as the Irish property would not form part of the testator's residuary estate in the UK.

28. That said, the law is quite clear that the intention which is relevant to the distribution of an estate is that which is evident from the validly executed will of the deceased. If the will clearly provides for something, then save in exceptional circumstances that must be taken to be the intention of the testator even if members of the testator's family are convinced that that was not what the testator intended. Where a will is prepared and executed with the benefit of professional advice, it will be commensurately more difficult to establish that the intention evident from the terms of the will was not in fact the testator's true testamentary intention.

29. In conclusion, and with some regret, I do not think that the applicants have discharged the very heavy onus of proof that lies on them to show that the revocation clause in the UK will did not revoke the earlier Irish will. It may be that the applicants are correct in their belief that the deceased did not intend it to do so, but the evidence available to the court is not sufficient to enable me to be satisfied of this. Consequently, I must refuse this application.