

UPDATE

The revocation of specific previous wills by general wording not valid - The Estate of Sushila Bhasin (Deceased) [2015]

Update prepared by Jonathan Speck (Partner, Jersey)

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The case involved the deceased who died domiciled in Kenya in May 1996. His child survived him but died without issue in October 2012. The deceased also had two brothers and four sisters and numerous nephews and nieces, one of whom is the applicant. With the consent of the Court, he stepped into the shoes of his father, (**Mr M**) a brother-in-law of the deceased, who died in June 2015. Mr M was one of the three executors in the Jersey will.

Evidence was heard from a doctor that showed he accompanied the deceased to England in 1995, during the course of his last illness for treatment, where he made arrangements to make an English will and a Jersey will.

Following his death, probate of the English will was issued without a problem but the Registrar in Jersey declined to admit the Jersey will on the grounds that the Kenyan will may have had the effect of revoking it.

A similar issue arose in the case of *Re Hawksford Executors Limited* [2013] (2) JLR 357 from which the following propositions can be stated.

- In relation to private international law, the Jersey courts have consistently had regard to English common law, and in particular to the rules in Dicey, Morris & Collins Conflict of Laws.
- The material or essential validity of a will of movables is governed by the law of the testator's domicile at the time of his death (Rule 154 of Dicey, 12th edition).
- The question of whether a will has been revoked depends on the law of the testator's domicile at the date of the alleged act of revocation, so that if the alleged act of revocation is the execution of a later will, the question whether the later instrument revokes the first depends on whether the second instrument is valid in accordance with the rules laid down in Chapter 27 of Dicey, and in particular, Rule 151 (capacity) and Rule 152 and 153 (formal validity).
- The aid of private international law is unnecessary where the intention of the testator is expressed in a manner which leaves no room for doubt (Cheshire and North's Private International Law, 11th edition at 844).

In the present case, the deceased was domiciled in Kenya both at the time of his death and at the time of the purported revocation of the Jersey will and accordingly, under private international law, Kenyan law would be applied to determine the question of whether the Jersey will had been revoked.

Decision

Applying the above principles to the facts the Court held that it had not been the intention of the deceased in executing the Kenyan will to revoke the Jersey will and it had been his intention that his Jersey situate assets be distributed in accordance with the Jersey will. The Greffier, who is the clerk of the Court, was accordingly directed to admit the Jersey will to probate in and for the Island of Jersey.

Contacts

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