

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

Claim No. 2025/PRO/CPR/FP/00004

IN THE MATTER of a copy Will of SIDNEY ROLLINGTON INGRAHAM of #8 Ida Street of Balfour Avenue in the Northern District, in the City of Nassau on the Island of New Providence one of the Islands of the Commonwealth of The Bahamas bearing the date March 16, 2023, Deceased.

AND IN THE MATTER of an application on the part of the Applicants Sidney Rolanda Ingraham and Sidell Ann Ingraham as the Executixes of the said Will of the said Sidney Rollington Ingraham, deceased for leave to apply for Grant of Probate of the said Will by using a copy thereof.

B E T W E E N

SIDNEY ROLANDA INGRAHAM

AND

SIDELL ROLLINGTON INGRAHAM

(as Executrixes of the Estate of the late Sidney Rollington Ingraham)

Applicants

Before: The Honourable Madam Justice Constance Delancy

Appearances: Aisha Ferguson for the Applicants

Hearing date(s): 24 September 2025

RULING

DELNCY, J

[1.] This is the Applicants' application for an order granting leave to apply for a grant of Probate with a copy of the Will of the late Sidney Rollington Ingraham ("the deceased") annexed.

[2.] The Applicants are the daughters of the deceased and the Executrices named in the copy a Will dated 27 March, 2023. The deceased died on 7 April, 2023.

[3.] On 27 March 2025, the Applicants filed an “*ex-Parte Originating Summons*” a form which does not exist under the Supreme Court Civil Procedure Rules (“the CPR”). The application was supported by the Affidavits of Pernell Bowe, one of the witnesses of the deceased’s Will, filed on 27 March, 2025 and 18 September, 2025 (*Bowe Affidavits*). The application was also supported by the Affidavits of Georgiema Louise McKinney-Bethel, Justice of the Peace and draftsman of the deceased’s Will, filed 27 March, 2025 and 18 September 2025 (*McKinney-Bethel Affidavits*).

[4.] The evidence in support of the application may be summarized as follows:

- (i) On the instructions of the deceased, Georgiema Louise McKinney-Bethel, a Justice of the Peace, prepared a Will which the deceased executed on 16 March, 2023, and witnessed by Pernell Latoya Bowe and Maurice Andrew George Bethel;
- (ii) The deceased had custody of the original Will and Georgiema Louise McKinney-Bethel kept a copy thereof;
- (iii) The deceased died on 7 April, 2023;
- (iv) The original will cannot be found and is presumed to be lost.

Law and Analysis

[4.] Part 63.3 of the Supreme Court Civil Procedure Rules (CPR) provides that a contentious probate action must be commenced by a fixed date claim form and statement of claim and endorsed with —

- (b) **a statement of the nature of the interest of the claimant** and of the defendant in the estate of the deceased to which the action relates; and
- (c) **a memorandum signed by the Registrar showing that the statement of claim has been produced to him for examination and that two copies of the will have been lodged with the Probate Registrar.**

[5.] Part 63.6 CPR also lists the persons who ought to file an Affidavit

- (1) Unless the court otherwise directs, **the claimant** and every defendant who has filed a defence or an acknowledgement of service **in a probate action must swear an affidavit** —
 - (a) describing any testamentary script of the deceased person, whose estate is subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
 - (b) if any such script of which he has knowledge, is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Probate Registry within fourteen days after the filing of a defence or acknowledgement of service by a defendant to the action or, if no defendant enters an acknowledgement of service therein and the court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script or any part thereof required by this rule to be lodged in the Probate Registry is written in pencil, then, unless the court otherwise directs, a photostat copy of that script, of the page or pages thereof containing the part written in pencil, must also be lodged in the Probate Registry and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule, “testamentary script” means—

- (a) a will or draft thereof;
- (b) written instructions for a will made by or at the request or under the instructions of the testator; or
- (c) any document purporting to be evidence of the contents, **or to be a copy, of a will which is alleged to have been lost** or destroyed.

[Emphasis added]

[6.] English Court of Appeal case of **Sugden and others v Lord St Leonards and others** [1874-80] All ER Rep 21 *Cockburn, CJ* outlined what the Court ought to consider in determining whether to exercise its discretion and allow a copy of a will to be probated:

... In the **first place, was that will destroyed by the testator animo revocandi or not? Secondly, can secondary evidence be given of its contents? Thirdly, if so, have we satisfactory evidence of the contents? Lastly, if the evidence is satisfactory as far as it goes, but not altogether complete, ought probate to be granted so far as the evidence goes of the contents which we have before us?**

[Emphasis added]

[7.] A legal presumption of destruction *animo revocandi* raises in circumstances where a testator (deceased) kept custody of the Will as stated in **Sugden [supra]** as per *Sir George Jessel MR*:

I will first consider the question of the revocation of the will. As to that, **no doubt the law requires that it should be proved satisfactorily that a will has been duly executed and attested. You must also prove destruction of the will with intent to revoke, in order to get rid of the will itself. But there is another rule of law well established. If you trace the will to the possession of the testator, and it is not forthcoming at his decease, and there is no evidence to show what has become of it, that is a sufficient presumption of law that he destroyed it with the intention of revocation; but like all other presumptions of law, it can be rebutted by sufficient**

evidence. I believe I am right in saying that, like all other presumptions of law, **it may be rebutted by what is commonly called parol evidence,** but in this case might, more strictly perhaps, be called oral evidence. **To determine the first question, therefore, we have only to consider whether there is sufficient evidence to rebut the presumption.**

[Emphasis added]

[8.] The affiant in McKinney-Bethel Affidavits avers that the Will was given to the deceased after the same was executed. No evidence was provided as to the details of the nature of the custody exercised by the deceased of the Will post execution. Further, the Applicants relied on the assertions of the affiants in the Bove and McKinney-Bethel Affidavits which contained second hand accounts of purported searches and or efforts made to locate the Will.

[9.] The Court also notes that the parole evidence was adduced as to the deceased state of mind or declarations attributed to the deceased that proves that his intentions as stated in the copy of the Will presented remained unchanged.

[10.] Part 63 provides for the consideration of “*testamentary transcripts*” which definition includes “*a copy, of a will which is alleged to have been lost or destroyed*”. In **Sugden [supra]** as per *Sir George Jessel MR* posited that:

The whole theory of secondary evidence depends upon this, **that the primary evidence is lost, and that it is against justice that the accident of the loss should deprive a man of the rights to which he would otherwise be entitled.** I am at a loss to discover any reason whatever for distinguishing between the loss of a will and the loss of a deed in cases where a deed was required. If it is said that a will required execution and attestation, a deed required execution and delivery, and you could not establish the deed until you had shown that it had been executed, sealed, and delivered. Those were peculiar formalities as regarded a deed. As regards some other deeds, such as deeds in the execution of powers, attestation was commonly required, and as regards those deeds, everything that would be required in the case of a will may be proved by secondary evidence as in the like case of a deed. You must prove, then, not only execution, but that the deed of appointment was duly attested. Therefore, on principle, there was no possible distinction between the proof of a deed and the proof of a will.

[Emphasis added]

[11.] The information contained in the Bove and McKinney-Bethel Affidavits focused on the execution of the Will which was drafted in accordance with the deceased’s instructions. Both affiants averred to the same be duly executed by the deceased in the presence of two witnesses and the copy produced is a true facsimile of the same.

[12.] Further, the Applicants did not provide any information or consents of persons who may be prejudiced by the admission of the copy of the Will of the deceased sought to be established.

Disposition

[13.] The Court having considered the evidence and heard the submissions of Counsel finds that there is no evidence to rebut the presumption of destruction *animo revocandi*; nor is the Court satisfied that parties who may have a greater interest in the deceased's estate should the same be administered were notified or made a party to this application. In the circumstances the Court is not minded to exercise its discretion to allow the copy of the will to be admitted for the purposes of probating the deceased estate.

Dated the 26 day of January 2026

[Original signed and sealed]

Constance Delancy
Justice