

Neutral Citation Number: [2024] EWHC 2394 (Ch)

Case No: PT-2024-BHM-000087

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BIRMINGHAM**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**  
**IN THE MATTER OF EGARTON GARFIELD ATKINSON (deceased)**  
**AND IN THE MATTER OF THE SENIOR COURTS ACT 1981**

The Priory Courts  
33 Bull Street  
Birmingham  
B6 4DS

Date of hearing: 17 May 2024

**Before:**

**HIS HONOUR JUDGE RICHARD WILLIAMS**  
**(sitting as a Judge of the High Court)**

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**Between:**

**BERNADETTE LUCRETIA ATKINSON**

**Claimant**

**- and -**

**(1) CENTRAL ENGLAND CO-OPERATIVE LTD**  
**(2) NIKOLE ATKINSON**

**Defendants**

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**THE CLAIMANT appeared In Person**  
**MR MICHAEL STEPHENS for the First Defendant**  
**THE SECOND DEFENDANT appeared In Person**

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**JUDGMENT**  
**(Approved transcript)**

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**HIS HONOUR JUDGE RICHARD WILLIAMS:**

1. This is my ex tempore judgment at the return hearing of an application made by Bernadette Atkinson for an injunction to prohibit the body of her late father, Mr Egerton Garfield Atkinson, from being cremated.
2. The respondents are Central England Co-operative Ltd (“*the Co-op*”) and Nikole Atkinson, who is also a daughter of the deceased.
3. For ease of reference and with no disrespect intended, I shall in the course of this judgment refer to the family members by their first names.
4. By way of brief background:
  - i) the deceased died whilst visiting Jamaica on 20<sup>th</sup> January 2024.
  - ii) Upon the deceased’s body being returned to the UK, a funeral service was arranged by Nikole, which was held on 12<sup>th</sup> April 2024.
  - iii) The deceased’s body is currently held by the Co-op awaiting cremation on the instructions of Nikole.
  - iv) Upon hearing of the proposed cremation, Bernadette attended court last Friday before me and obtained an interim injunction without notice to the respondents. I was told that the body was due to be cremated the next day and in light of the urgency of the matter I granted the injunction to hold the ring until the application could be listed back before me today on notice to the respondents.
5. Bernadette and Nikole attend today, each supported by numerous family members. They are not legally represented. That is no way intended as a criticism of either

party, but simply recognises the fact that both are at a potential disadvantage in not knowing the legal position.

6. The Co-op is represented today by Mr Stephens of counsel. The Co-op is neutral in this dispute, but to assist the court and the parties Mr Stephens has produced a helpful written note explaining the legal position and to which he has just spoken. I was also told that the Co-op would not be seeking any order for costs in relation to today's hearing, and I thank them for that concession on behalf of the wider family.
7. The legal position in summary is that:
  - i) There is no ownership of a body. Where there is a valid will appointing an executor then the primary responsibility to determine how and when the body should be disposed of is that of the executor. In doing so it is entirely appropriate for an executor to take into account and, indeed, attach significant weight to the wishes of the deceased.
  - ii) However, s.116 of the Senior Courts Act 1981 gives the court, in special circumstances, the power to pass over the executor and appoint some other person.
8. Mr Stephens took me through a number of other cases, but every family is different. Therefore, I assure the family that I have given very careful consideration to the particular facts of this case rather than being led by what other judges may have decided in other cases on different facts.
9. Nikole has produced a copy of a will dated 7<sup>th</sup> June 2022 ("*the Will*") under which the deceased appointed her as sole executor and expressed the wish that on his death his body be cremated and Nikole make the necessary arrangements.

10. It is Bernadette's case that the Will is not genuine and cremation would be against the deceased's expressed wishes and his beliefs as a practising Rastafarian.
11. I have heard a lot today about a lot of disputed facts in relation to:
  - i) the deceased's death in Jamaica;
  - ii) the repatriation of the body to the UK; and
  - iii) whether or not Bernadette was consulted or informed or was kept in the dark about those matters.
12. Having heard no evidence about those disputed facts, I cannot determine today where the truth lies. However, and in any event, it seems to me that the relevant allegation for present purposes is that the Will is not genuine.
13. The Will on its face shows that it was professionally drafted and witnessed by two solicitors, Mr Singh and Mr Kindula. Bernadette essentially makes an allegation of fraud. Again, I cannot determine that allegation today. An allegation of fraud is a very serious allegation, and there would need to be a trial for such an allegation to be fairly and properly determined. In preparation for such a trial:
  - i) Bernadette would be required to fully particularise her claim in a formal statement of case stating the facts that will be relied upon at trial to justify an inference of dishonesty.
  - ii) It would then be necessary for what is called a process of disclosure, whereby the parties disclose relevant documents. Clearly very relevant would be the probate file from the solicitors firm that purportedly drafted the Will.

- iii) There would need to be witness statements prepared. Two very important witnesses would be the solicitors who purportedly witnessed the Will, and so it would be necessary to obtain witness statements from them.
  - iv) The matter would then need to be set down for a trial. The witnesses would attend trial, they would be cross-examined and the judge would then make a determination in relation to the allegation.
  - v) As I have described, that process would result in very significant delay and in the context of the deceased having died some four months ago.
14. My paramount consideration today is that the body of the deceased be disposed of with all proper respect and decency which, in my view, necessarily means without any further delay rather than being left languishing in a funeral home.
15. Ultimately, on the evidence currently before me and without deciding the point, there is nothing that raises any suspicions that the Will is not genuine. Just to be clear, I am not making that finding, because I have not heard the evidence, but there is nothing on the face of the Will that arouses my suspicions today. Indeed, Bernadette says that she has spoken to Mr Singh, who confirmed that he witnessed the Will but did not draft it. Bernadette has produced some email exchanges with Mr Kindula in which he does not say that he did not sign the Will. Rather, he states that he does not recall signing the Will without having had sight of it. Whilst it does appear that the firm of solicitors that purportedly drafted the Will was disciplined by the regulatory body, that was in relation to overcharging clients. It appears that Mr Kindula and Mr Singh are still practising as solicitors, and have not been debarred from practice.

16. It is Bernadette's written evidence that the deceased expressed his wish to be buried, rather than cremated, in accordance with his Rastafarian beliefs. It is Nikole's written evidence that Rastafarianism does not prohibit cremation. Whilst I have heard what people have had to say about that issue today, they are not experts and neither am I. Ultimately, it would be necessary to hear expert opinion evidence regarding Rastafarian beliefs on burial over cremation. That would of course result in further delay even ignoring the practical issue of who would/could pay for such expert opinion. However, it was generally accepted at today's hearing that whilst burial is certainly the preferred method of disposal, cremation is not specifically prohibited under Rastafarianism.
17. So for all those reasons, I am not persuaded for present purposes that there are what is called special circumstances which would justify me intervening under s.116 of the Senior Courts Act 1981 and overriding the position of Nikole under the Will. The Will appears regular and rational on its face, and it expressly directs Nicole to make the funeral arrangements for the deceased by way of cremation. Therefore, I dismiss the application and discharge the interim injunction. That said, I am going to make a direction in relation to permitting Bernadette to visit the body if that is what she still wishes before the cremation takes place.

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