

**IN THE SUPREME COURT OF BELIZE A.D. 2001.**

**ACTION NO. 587 OF 2001**

**IN THE MATTER OF THE WILL OF FABIAN CAMAL deceased  
dated the 28<sup>th</sup> day of September, 2001.**

	<b>(MARIANA A. CAMAL (Executrix)</b>	<b>APPLICANTS</b>
<b>BETWEEN(AND</b>	<b>(</b>	
	<b>(LUISA RODRIGUES ( BIVIANO CAMAL ( MARIA CAMAL ( FORTUNATO NOBLE (ALFONSO NOBLE (EUSTAQUI HERNANDES (RESAURA CAMAL (Beneficiaries)</b>	<b>RESPONDENTS</b>

Mr. N. Dujon for the applicant.  
Respondents attended in person.  
Mr. O. Sabido S.C. instructed to note judgment.

AWICH J.

21.2.2005.

JUDGMENT

1. Mr. Fabian Camal died on 2.10.1999, testate, leaving a testament, that is, a will dated 28.9.1999, at Belize City. The validity of the will has not been challenged. In the will he directed that : *“everything must be administered by my daughter Mariana Bertha Camal same as she did for me when alive”*. Despite that, he also directed some role for his son-in-law Santos Faustino

Hernandes, also known as Tino, and a limited role for Luisa Rodriques, his common-law wife. Probate of the will has not been obtained, yet the applicant has been referred to as an executrix in the citation of the application and in the application papers. Moreover, the name was stated as, “*Mariana A. Camal (Executrix)*”, in the citation of the application. The will speaks of a different name, “Mariana Bertha Camal.” Notwithstanding, there has been no issue about that, so I shall merely mention that this judgment concerns Mariana Bertha Camal referred to in the will, and the respondents.

2. The will was made in Spanish. It has been translated by Mr. Roy Griffith, Court Interpreter, who swore to the accuracy of the translation. There has been no challenge to the accuracy of the translation.
3. ***The Application.***

Mariana Bertha Camal has applied under ***Order 59 rule 19 of the Rules of the Supreme Court***, by originating summons dated 15.11.2001, for interpretation by the Court of clauses in the will. Under ***O. 59 r 19*** “[an] *executrix, administrator or any person claiming to be interested in the relief sought as devisee, legatee, next of kin, heir-at-law ... may take out an originating summons for ... (g) the determination of any question arising in the administration of the estate.*” So it does not matter whether Mariana Bertha Camal had been granted probate; she had the standing to make this application in her capacity as an interested person anyway.

4. Cited as respondents are all those named in the will and to whom something has been bequeathed or devised out of the estate. They were all served with the application. They attended Court on 23.1.2004, without attorneys. Upon inquiry by Court, several of them expressed desire to instruct attorneys. The Court granted adjournment for that purpose. They again attended Court on the adjourned date, none of them had an attorney. The Court proceeded to hear the application. The will was read to them in Spanish in Court. All spoke Spanish. Each confirmed that he or she heard the will and understood it. They had of course been served with copies. They were asked to respond if they wanted. They did not advance any particular meaning they wished given to the various statements in the will. There was no reason for the Court to suppose that any of them urged any particular meaning to be given to any of the clauses questioned or any statement in the will.
  
5. The will has not been admitted to probate and so probate has not been granted to an executrix or executor. No dispute as to the meanings of the clauses, the subject of this case, has arisen as between legatees as yet, so the judgment sought will be declaratory only, for the guidance of whoever will be the executor or executrix. Generally, declaratory judgment is discretionary, court may decline to make a declaratory judgment unless it is desirable. However, administration of estate questions seem to be the exceptions because application for construction of wills or even for guidance by court of executors and administrators are common. It is certainly desirable that interpretation of wills or direction by court to executors or administrators be obtained before a doubtful action is taken in the administration of an estate.

6. The questions presented for interpretation by Court were put in this form:

“1. That it may be determined whether upon the true construction of the said will:

a. the Clause “*I leave as my only heiress of all my possessions to my loving common-law wife LUISA RODRIQUES*”, passes to the said LUISA RODRIQUES: the whole of the estate of the deceased, **or**

b. if read in conjunction with the other and subsequent clauses in the said will she takes, jointly with each of those so named, the gifts referred to in the said clauses, and takes solely only such possessions as are not referred to in the said subsequent clauses, and

c. how else the same ought to be dealt with.

2. That provisions may be made for the costs of this application to be paid out of the testator’s estate.

3. If and so far as is necessary, administration of the trusts of the said Will.

4. Further or other relief.”

7. *Construction of the will.*

The matters stated at paragraphs 2 and 4 are prayers for reliefs, not questions about interpretation of the will, for answers by the Court.

8. The matter at paragraph 3 appears to be incomplete and submission by counsel did not include it. If the paragraph is meant to ask whether any trusts have been created by the will and how the trusts are to be administered, then my answer is that trusts have been created. The first is in respect of the cane and sale quota to be shared out among the sons. The trustees will be Mariana Bertha Camal, Santos Faustino Hernandez and Luisa Rodriques. The Trust will last until each son marries. The second trust is in respect of the deceased’s temple. The trustees are Mariana Bertha Camal and Santos Faustino Hernandez.

9. For the full appreciation of the meanings I shall give to the clauses put forward in the questions to the Court, I need to set out the will in full. It is not very long. It is my view that the intention of the testator must come from the words as they relate to the entire context, especially given that the will was written in the form of a letter or message. The will states:

*“Belize City  
28<sup>th</sup> September 1999.*

*I, Fabian Camal, in complete use of my mental faculties and in presence of witnesses.*

*This is my Will and I hope that it be respected as such and of which my Son-in-law Santos Faustino Hernandez is responsible to see that it be complied with in the way that I have hereby indicated, that if during my illness I never recover and in the case of dying I made him Tino, swear that he must not disclose this to anyone, not even to Mami.*

*That in 90 days after my death that the present be known, which I think he will carry out because during my illness, of all my sons-in-law, he is the only one who had shown interest in me and I feel that he is the only one in whom I can confide. In continuation I make my Will known.*

*I leave as my only heiress of all my possessions to my loving common-law wife, Luisa Rodriques, but every thing must be administrated by my daughter, Mariana Bertha Camal same as she did for me while alive.*

*I leave to Biviano and Chiqui the land where pine is cultivated. Ramon has his piece of land and also his house Carlos as well.*

*To my grandchildren, Fortunato and Alfonso Noble I leave the land where my Temple is situated but I want my Temple to remain there always.*

*I had said that the property in Corozal was to be divided in two parts, one half for Mami and the other half for Rosaura but in view that Rosaura in the final moments had shown that she did not appreciate me, I have decided to leave for my daughter Mami the whole property in Corozal because she has demonstrated that in reality she loved me, and that she loves me from her heart and not for*

*interest, and for all the expenses she incurred on me, she deserves it more than anyone else.*

*To Luisa my grand-daughter, she may live in the little house at the back once she is single, but if she is with her common-law husband she must continue to pay \$50.00 rent to be given to my common-law wife Luisa Rodriques.*

*Of my four sons namely, Pancho, Ramon, Carlos and Biviano, I do not want them to continue fighting because if they continue to fight each of them must find their own house; and when all four have their wives, Luisa you must give to each his share of cane and 50 tons from my quota, the balance is yours which Bertha must always administrate. I want you to do this until they all have their wives because if you give it to Carlos now they will all fight and I don't want them to fight.*

*Rosaura I want you to please give your mother the tape-recorder, video and the table with the chairs and so as not to leave you without anything I give you the pasture land that I bought from Cado, also the rings and the chains that I had bought you, also to Beta, Cosita and Emelda I have already given something although it is small, lastly I just want to thank every one especially my brother Agapito and to Tino for all they are doing for me.*

*Bertha do me a favor give the books that I have offered to Tino and thanks once again and if I recover, all that I have been writing here, that is what I will do. Without anything else.*

*Signed Fabian Camal*

Witness Signed: *Santos Faustino Hernandez*

Witness Signed: *Iris Antonia Hernandez*”

10. When a document is said to be a will, it is meant that it is a testamentary disposition by the deceased of his property, it is a written declaration by the deceased of how he intends to have his property disposed of after his death. It takes effect at his death and it is always revocable by the maker subject to the rules regarding mutual wills - see *Andrea McKenzie Roe and Another v Angela Tomlie King, Supreme Court Action No.444 of 2001*. Because a will may be amended or revoked, it is said to be ambulatory. There is no precise definition of a will in the *Wills Act Cap 203*, but the Act lays down the rules for making a valid will, when it takes effect, and its nature.
  
11. From the above definition and nature of a will, particularly that a will is revocable, I have to say right away that the words “ *and if I recover, all that I have been writing here, that is what I will do, without anything else*”, which words are at the close of the deceased’s will under consideration, are of no effect. No one would have been able to enforce the disposition if Mr. Camal was alive or if he decided to change or add to or revoke the will. As it is, Mr. Camal died without revoking or changing his will so his intention expressed in the will must be carried out by the person or persons to be granted probate of the will, whether or not they like the dispositions made. The “*will shall be construed with reference to real estate and personal estate, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears in the will*” - see *S: 4 of the Act*.

12. The second preliminary point that I wish to mention is that the Court has been asked to interpret certain words and expressions in the will and declare their meanings. It is not for the Court to decide the merits of the dispositions, that is, whether the dispositions made by Mr. Camal were wise or fair or not. The law allows a person to dispose of his property in the way he wishes, subject only to the limited power to vary a will upon application under *S: 35 of the Wills Act*, by a widow or minor child or child under disability of the testator, for whom no reasonable provision has been made in the will. There has been no application in this matter, under the section.
13. What has been regarded as the main cause of uncertainty is the expression in the fourth paragraph, namely; *“I leave as my only heiress of all my possessions to my loving common-law wife, Luisa Rodriques,...”* The question posed is whether the expression means that Luisa Rodriques takes all the estate, in which case, the various devises and bequests become of no effect, or does it mean that “she takes jointly with each of those named”, to have been given various specific items in the will. To that question I have to add: or do the words mean that the will devised and bequeathed all the remainder of the estate to Luisa Rodriques, after the various stated gifts to the named persons have been taken by each of them?
14. It may be an attractive view that the words in the will making gifts to Luisa Rodriques and the words making gifts of specific items to the persons named create inconsistency so the will may be regarded as having failed, in which case, the deceased may be regarded as having died intestate. I think that

would merely be an easy way out. I think a hard look should be taken of the entire will to see what instructions of the deceased can be identified and whether the intentions in the instructions do reconcile any apparent inconsistencies.

15. The cardinal rule of interpretation of a will is that the intention of the testator as declared by him and apparent in his words in the will must be given effect. The principle requires that the testator's intention be ascertained from the words that he has used in his will given, normally, their natural and grammatical meaning, but also noting that meanings of words can admit to modification to accord with the real intention shown by the will as a whole. I do not think one should give too much weight to grammatical accuracy. What may be an acceptable meaning of an expression in Creole or Spanish, the two most widely spoken languages in Belize, may not be the acceptable meaning of the expression translated into English Grammar, the language of the Court. The judgments of the House of Lords in *Perrin and Others v Morgan and Others* [1943] 1 ALL ER 187 or [1943] AC 399, and of the Court of Appeal in Re *Rowland, Deceased: Smith v Russell and Others* [1963] 1 Ch1, explain the cardinal rule. Note that the divergent views of the judges as to details in both cases are apparent.

16. In the latter case, the majority of the Court of Appeal would not use the context of the will to give meaning to the word "*coinciding*" in the expression; "*in the event of the decease of the said Shirley Brownlie Roland preceding or coinciding with my own deceased, I give and bequeath all my estate to Eric Arthur Ingman Rowland (brother) and Henry Brink*

(nephew)...” Their Lordships interpreted the word “coinciding” to mean simultaneous, and went on to hold that the death of Dr Rowland and his wife who were both on a ship that sank in unknown circumstances in the Solomon Islands, (a country of very good hearted people I had the honour to serve for 6 years), did not coincide! Their Lordships then used *S: 184 of the Law of Property Act (England)*, to decide the sequence of the deaths which was that the younger wife survived the older husband. The estate of the husband then passed to her estate and on to Diana Sybil Russell, her niece, to whom she left all her estate, “*in the event of the decease of the said Trevor Ingman Rowland preceding or coinciding with my own decease ...*” Dr. Rowland was a medical officer in Her Majesty’s Colonial Service. There is no provision in the Law of Property Act of Belize equivalent to *S: 184 of the Law of Property Act (England)*, I wonder what the judgments of the majority judges might have been had the case been a case in Belize. The dissenting judgment of Lord Denning MR, used the entire context of the will; he held that the deaths coincided, so the estate of Dr. Rowland passed to Mr. Rowland, the brother, and Master Brink, the nephew. That would be the just judgment in Belize, in my view.

17. In *Perrin and Others v Morgan*, the *House of Lords* overruled the view that words already legally defined in an earlier case must continue to have the same legal meaning in subsequent interpretations. Their Lordships held that the word “moneys” in the expression; *all moneys of which I die possessed of shall be shared by my nephews and nieces now living*”, included all the net personalty. They further held that “*the court is not bound to adopt a fixed meaning of the word ‘money’ as being its legal meaning*”. I note that the

words of Ms. Morgan was not grammatically correct, but it was found that the words disclosed her intention. It was in that case that two judgments used the well recognised expression, “*cardinal rule of interpretation*”, in relation to intention in the will.

18. In my view, the apparent inconsistency in Mr. Camal’s will can be resolved. His words do show, without doubt, that he intended to give to each of the named persons the respective named item of property. Accordingly, his loving common-law wife, Luisa Rodriques , does not get those items given to named persons. Each of them gets what has been given to him or her. All items of property that the deceased has not mentioned as given to a particular person are given to the common-law wife. I do not know what those items are, although I can say they would include, but not only, personal belonging. They may well include money in banks, debt owing to the deceased, other personalty, and even realty, if any, not specifically given to someone else in the will. Apart from the net residue of the estate, one item, namely, rental of \$50 payable by grand-daughter, Luisa, and her common-law husband, will be paid to the common-law wife Luisa Rodriques, but that payment will cease in the event that Luisa stops living with the common-law husband. If the house has not been specifically mentioned in the will as a gift to a particular person, then Luisa Rodriques or her estate will have the reversionary interest after Luisa, the grand-daughter, has left it or has died.

19. ***In the Event of Death of Luisa Rodriques or any Other Person Named.***

It was mentioned in Court that Luisa Rodriques had since died. That should have been put in an affidavit for the Court to take it as evidence. If that is true, then gift to her under the will are not in vain. They will be paid or given over to her estate for the benefit of those who are entitled according to law, to her estate at the time she died. The same applies in the event of the death of any other legatee whose death may have occurred since Mr. Camal died. The gift to that person will pass to his or her estate. Of course, any death will have to be proved; usually death certificate is filed by the person or persons who will be granted probate of the will or administration of the estate.

20. *Executors and Executrixes.*

An important matter that also needs clarification is: Who are appointed in the will as executors or executrixes and may obtain probate of the will?

21. The deceased's daughter, Mariana Bertha Camal has been assigned the leading role in the actual administration of the estate. She is entitled to apply under *S: 15 of the Administration of Estate's Act Cap 197, Laws of Belize*, and in accordance with the procedure in *Order 69 of the Rules of the Supreme Court*, for grant of probate.

22. Mr. Santos Faustino Hernandez, also known as Tino, the son-in-law of the deceased, was also given in the will, a role that concerns carrying out the

directions stated in the will. The actual words giving him the role were:

*“This is my will and I hope that it be respected as such and of which my son-in-law Santos Faustino Hernandez is responsible to see that it be complied with in the way that I have hereby indicated... That in 90 days after my death that the present be known, which I think he will carry out because during my illness, of all my sons-in-law, he is the only one who had shown interest in me and I feel that he is the only one in whom I can confide”.* The intention in those words is to give responsibility for carrying out the directions in the will to Mr. Hernandez as well. He is also entitled to apply for grant of probate of the will. Maraina Bertha Camal and Santos Faustino Hernandez will become joint executor and executrix upon obtaining probate of the will, over the entire estate.

23. Further, Luisa Rodriques, the common-law wife, has been given, albeit, a very limited responsibility in carrying out one aspect of the will. The words giving her the limited responsibility are: *“Of my four sons namely, Pancho, Ramon, Carlos, and Biviano, I do not want them to continue fighting because if they continue to fight, each of them must find their own house; and when all four have their wives, Luisa, you must give to each his share of the cane and 50 tons from my quota, the rest is yours which Bertha must always administrate. I want you to do this until they all have their wives because if you give it to Carlos now, they will all fight and I don’t want the to fight”.* In the Context of the will, the dominant intention is to leave all property to Luisa Rodriques, save those items specifically given to others, so the name Luisa in the above clause must refer to Luisa Rodriques, the common-law wife, to whom all possessions including cane-fields and sale

quota have been left. She was in effect appointed an executrix to the limited extent of giving shares of cane and 50 tons from the deceased's quota. She is entitled to apply for grant of probate for that limited purpose only. The law allows appointment of an executor or executrix for only a limited role. Luisa Rodriques is entitled to apply for probate for that limited role. She will be the third joint executrix, but her role will be limited as stated. If she has since died, the rule applicable when a person named executrix in a will has since died will be followed.

24. The death certificate recording the death of Luisa Rodriques was shown to Court, it may be returned to her personal representatives who are the persons entitled to it. They may require it for obtaining probate or administration of her estate.

25. *Costs.*

This application is meritted because it raised issues of substance. The costs will be in the administration. The costs of appearance by learned counsel, Mr. O. Sabido S.C, to note judgment and advise on it will also be in the administration of the estate.

26. Pronounced this Monday, the 21<sup>st</sup> day of February 2005.

At the Supreme Court

Belize City.

Sam Lungole Awich

Judge

## Supreme Court