

IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION HELD AT KUMASI
ON TUESDAY THE 4TH DAY OF MARCH 2025 BEFORE HIS LORDSHIP JUSTICE
CHARLES KWESI BENTUM - HIGH COURT JUDGE

SUIT NO. GJ12/36/2025

1. ABRAHAM KWASI SERBEH - PLAINTIFFS
2. JOHN SERBEH
3. SAMUEL SERBEH
4. TIMOTHY KWAME SERBEH JR.
5. LINDA SERBEH

VRS.

1. KWAME APPIAH - DEFENDANTS
H/No. Unknown
Ashanti New Town – Kumasi

2. ANDREWS KWADWO OWUSU BANAHENE
H/No. Kwadaso Estate - Kumasi

3. SARAH AKUA AFRIYIE SERBEH
H/No. Unknown Atasomanso - Kumasi

4. FRANCIS KWARTENG
H/No. Unknown Asafo - Kumasi

TIME: 09:05AM.

JUDGMENT:

By their Writ of Summons accompanied by a Statement of Claim and filed in the Registry of this Court, the Plaintiffs claim against the Defendants as follows:

1. A declaration that, the paper writing dated 31st January, 2022, purporting to be the last Will and Testament of Timothy Kwame Serbeh is a forged document and not the act of the said Timothy Kwame Serbeh (deceased).
2. An Order cancelling the said "WILL".
3. An Order of Perpetual Injunction restraining the Defendants and all who claim through them from taking any steps on the strength of the "Will".
4. Costs, including Lawyer's costs.
5. Any Order as this Honourable Court might deem fit.

From the reliefs sought, the Plaintiffs dispute a document they claim is being held by the Defendants as the last Will and Testament of Timothy Kwame Serbeh (deceased).

From the generality of their Statement of Claim, the Plaintiffs seek to impeach the said document dated 31st January, 2022, on the ground of forgery and fraud.

Their basis for claiming that, the said document is a forgery and fraudulent is particularised at paragraph 10 (a) to (d) of the Statement of Claim.

Referring to the document as “paper writing” the Plaintiffs complain that, same is the handiwork of the 3rd and 4th Defendants by which they intend to be a deception for benefit of the 3rd Defendant.

The Plaintiffs accused the 3rd and 4th Defendants of forgery and fraud for allegedly imputing a thumbprint to be that of the deceased, Timothy Kwame Serbeh, without his consent.

Again, the Plaintiffs accused the 3rd and 4th Defendants of forgery and fraud for allegedly alluding to gifts, bequests and devises as made by Timothy Kwame Serbeh, whom, they alleged was at the material time, not possessed of the mental acumen to make those gifts, bequests and devises.

Further, the Plaintiffs alleged that, the 3rd and 4th Defendants, falsely claimed, that the contents of the “Will” have been interpreted and explained to Timothy Kwame Serbeh, when it was not so interpreted or explained.

Finally, on the particulars of forgery and fraud, the Plaintiffs alleged that, the 3rd and 4th Defendants, fraudulently stamped the alleged Will with the stamp/seal of Holy Trinity Chambers, when the Chambers has not so authorised, consented or mandated.

The Court emphasis that, the particulars of forgery and fraud and their attribution by the Plaintiffs to 3rd and 4th Defendants specifically, is gleaned from a combined reading of paragraphs 9 and 10 of the Statement of Claim.

Defence put up by the Defendants against the allegations of fact of the Plaintiffs.

The Defendants forcefully contended that, the said document dated 31st January, 2022, was indeed and in fact, the Last Will and Testament of the Late Timothy Kwame Serbeh.

The 4th Defendant admitted that, he is a Law Clerk at Holy Trinity Chambers and is one of the attesting Witnesses of the Late Timothy Kwame Serbeh's Last Will and Testament.

The Defendants denied that, the said paper writing is a forged document. They maintained that, the document is the act of the deceased, Timothy Kwame Serbeh.

They further denied that, the deceased died at the age of 110 years. According to them, at the time of the death of Timothy Kwame Serbeh, he was not blind. He was not physically weak and mentally impaired due to old age. They contended that, he was capable of executing a Will.

According to the Defendants, the dispositions and/or devises contained in the document they claim is the Last Will and Testament of the said deceased person, fully expressed his last wishes and desires and further that, same conforms with the formalities of a valid Will as require by Law.

The Plaintiffs filed a Reply on 12th December, 2024 and maintained their case as pleaded in their Statement of Claim.

Issues Set down for Trial.

Upon the close of pleadings, both the Plaintiffs and the Defendants filed respective Issues for determination. These were set down by the Court for determination as follows:

1. Whether the paper writing dated 31st January, 2022, is the act of Timothy Kwame Serbeh (deceased).
2. Whether the said paper writing is a forged document.
3. Whether the said act is the handiwork of the 3rd and 4th Defendants.
4. Whether or not the testator had the requisite testamentary capacity at the time of executing his last will and testament.
5. Whether or not the WILL dated 31st January, 2022 conforms with the formalities of a valid WILL as required by law.

In the case of **Thomas Tata Atanley Kofigah v Kofigah Francis Atanley**, Civil Appeal No. J4/05/2019 dated 22nd January, 2020, (unreported), the Supreme Court guided where the validity of a Will is challenged, especially on grounds of forgery as follows:

“The settled position is that, in such a case, the proponents of the Will had the burden to satisfy the Court that, the document presented as the Will and Testament of the deceased, was freely made by her and was duly attested to, by two Witnesses, who were present at the same time.

The proponents are further to satisfy the Court that, the testator at the time she executed the Will was corpus mentis not suffering from any impairment of mind.

Once the proponents of the Will, discharge this burden on them, then the burden of proof shifts to the party alleging that, the document is a forgery or does not meet the requirements of the Wills Act, to proof those allegations.”

Following the guide *supra*, the parties are to know the allocation of the burden of proof on each of them.

It is that, the proponents of the Will, that is, the Defendants, have the initial burden of proof on the following matters.

1. That the document they contend as the Will and Testament of the Late Timothy Kwame Serbeh was freely made by him.
2. That the document presented as the Last Will and Testament of the deceased was duly attested to by two Witnesses who were present at the same time.
3. That the Late Timothy Kwame Serbeh at time he executed the Will was *corpus mentis*, not suffering from any impairment of mind.

From the case of **Thomas Tata Atanley Kofigah**, *supra*, once the proponents, in this case, the Defendants herein have discharged the burden on them, the burden shifts to the party claiming that, the document is a forgery, in this case, the Plaintiffs.

This Court, by the principle of *stare decisis*, shall follow the binding authority of the above case *supra* on the allocation of the burden of proof and hold the Defendants to satisfy the Court on the Issues imposed on them by the case under reference.

Evaluation of the Evidence adduced at the Trial *visa vis* the Burden of Proof and Issues for determination.

Evidence of the Defendants – that the Will and Testament of the Late Timothy Kwame Serbeh **was freely made by him and duly attested to by two Witnesses who were present at the same time.**

It is the testimony of the Defendants, the proponents of the said Will that, same was freely made by the deceased herein and duly attested to by two Witnesses who were present at the same time.

The 4th Defendant gave Evidence-In-Chief that, T. K. Serbeh freely and voluntarily gave his instructions for the preparation of his Will to him. According to the 4th Defendant, one Lawyer Amoateng drafted the Will for the Late Timothy Kwame Serbeh sometime in December, 2021 and instructed him to take the draft of the Will to T. K. Serbeh at his place of abode and to read and interpret same to him, which he says he did.

He testified further in-chief that, on or about 31st January, 2022, the Late Timothy Kwame Serbeh invited him to Ashtown, Kumasi and informed him that, he wanted he, the 4th Defendant herein, to attest to his Will together with

one Kwabena Agyemang Brobbey, a goldsmith resident at Ashtown, as the other attesting Witness, which he obliged.

According to this Witness, the Late Timothy Kwame Serbeh, Kwabena Agyemang Brobbey and he, the 4th Defendant herein on the same 31st January, 2022, then went to one photo studio known as *“Mr. Six Photo Studio”*, located at Ashtown, where, the Late Timothy Kwame Serbeh voluntarily, thumbprinted his Will in the presence of Kwabena Agyemang Brobbey and he the 4th Defendant herein, after he had read and interpreted the document to him in Twi Language and appeared perfectly to understand its content.

4th Defendant testified further that, Kwabena Agyemang Brobbey and him appended their signatures to the document as attesting Witnesses to its due execution in the presence of the Late T. K. Serbeh and in each other's presence.

This Witness informed the Court that, photographs were taken by the photographer when they were all signing the document in the studio and tended in evidence as Exhibit “2 Series”, the pictures taken during the signing.

The Witness was subjected to Cross-Examination on his testimony on 25th February, 2025. This is the interaction that took place between him and Counsel for Plaintiff:

“Q: So, who prepared the purported Will in dispute?”

A: It was prepared by Lawyer Solomon Tawiah Amoateng.

Q: Have you read the purported Will?

A: Yes, I have read it.

Q: Did you find anywhere in the purported Will that, it was prepared by Lawyer Solomon Tawiah Amoateng?

A: He has signed the back of the Will and embossed the Will with the stamp of Holy Trinity Chambers. The Holy Trinity Chambers used to belong to Dennis Adjei, so it was called Dennis Adjei Legal Consult, when he became a Judge, he amended the name by substituting Dennis Adjei to leave the name only as Holy Trinity Chambers.

Q: I am putting it to you that, there is nowhere in the purported Will that, you will find the name of Lawyer Solomon Tawiah Amoateng truly to show that he really prepared the purported Will.

A: The name Lawyer Solomon Tawiah Amoateng is not stated on the document. He has however signed same and embossed the stamp of Holy Trinity

Chambers on the document. Where Lawyer Amoateng has signed, it is written "Solicitor of Supreme Court of Ghana."

The Cross-Examination vigorously continued:

Q: Per paragraph 5 of your own Witness Statement, the Late T. K. Serbeh informed you that, he wanted a Lawyer and you were able to get him one. Is that correct?

A: That is true.

Q: The said Lawyer, Solomon Tawiah Amoateng sent you to the house of the Late T. K. Serbeh to take instructions from him, according to paragraph 6 of your Witness Statement. Is that correct?

A: That is correct.

Q: Was the instructions of the Late T. K. Serbeh taken in his house or in his Lawyer's Office?

A: The instructions was taken in the house of the Late T. K. Serbeh. What the Late T. K. Serbeh told me was taken down by me in writing and I conveyed it to the Lawyer.

Q: Is there any evidence to show that, the instructions given by the Late T. K. Serbeh was reduced into writing by you?

A: Yes, I have evidence.

Q: *Considering paragraphs 5 and 8 of your Witness Statement, you want the Court to believe that, in December, 2021, the Late T. K. Serbeh told you to look for a Lawyer for him and in that same month and year, the instructions was taken and the Will was prepared and taken to the Late T. K. Serbeh. Is that correct?*

A: *That is correct.*

Counsel pursued the Witness intensely with further examination:

Q: *In executing the Will, was the Late T. K. Serbeh guided by anyone because he blind?*

A: *I guided him.*

Q: *Per paragraph 8 of your Witness Statement, you said that, you sent the drafted Will to the Late T. K. Serbeh in his place of abode in December, 2021. Is that correct?*

A: *That is correct.*

Q: *Per paragraph 9 of your Witness Statement, you said that, the Late T. K. Serbeh invited you to Ashtown – Kumasi and said that, he wanted me to attest his Will together with one Kwabena Agyemang Brobbey. Is that correct?*

A: *That is correct.*

Q: *So, from December, 2021 to 31st January, 2022, where was the drafted Will kept, was it with the Late T. K. Serbeh or you between that period?*

A: *It was with the Lawyer.*

Q: *So, which Will did the Late T. K. Serbeh wanted you to attest to?*

A: *It is Exhibit "C".*

Q: *Then I am putting it to you that, the purported Will was not with the Lawyer or the Late T. K. Serbeh but it was with you.*

A: *It is not true.*

On the attestation of the signature of the Late T. K. Serbeh, the Cross-Examination intensely continued:

Q: *So, were you able to attest to the purported Will?*

A: *I attested the Will.*

Q: *In whose presence?*

A: *In the presence of the Late T. K. Serbeh and Kwabena Agyemang Brobbey.*

Q: *So, who took the Late T. K. Serbeh to Mr. Six Photo Studio at Ashtown?*

A: *He took me there because he says his Witness is there, Mr. Kwabena Agyemang Brobbey.*

Q: *But you told this Court that, you attested to the Will in the presence of the Late T. K. Serbeh and Kwabena Agyemang Brobbey, so why then, was he taken to Mr. Six Photo Studio in Ashtown?*

A: *I was not the one who took him there. He said I should accompany him there to take photographs to proof that, he made the Will. I did not then know Kwabena Agyemang Brobbey. That is the first time, I met him.*

Q: *I am putting it to you that, per the answers given, the purported Will that you are talking about to be a valid Will is not the true desires and wishes of the Late T. K. Serbeh.*

A: *I do not agree. He made his own Will because the properties belong to him."*

From the exchanges, the Court finds that, the testimony of the Witness stood that, the document Defendants contend is the Last Will and Testament of the said deceased herein was freely made by him and further that, same was duly attested to by two Witnesses who were present at the same time.

The Court has arrived at this finding based on the fact that, the testimony proffered by the Witness stood undiscredited.

Further, his oral and documentary evidence that, the document relied on by them, as the Last Will and Testament, was freely made by the Late T. K. Serbeh and duly attested to by two Witnesses present at the same time is supported by Exhibit "2 Series".

Exhibit "2" shows the Late T. K. Serbeh signing the document by way of thumbprinting. **Section 46 of the Interpretation Act, 2009, (Act 792)** defines signature as follows:

"Signature" includes the making of a mark and of a thumbprint;"

In his presence are two persons. These two persons, together with the Late T. K. Serbeh appear in the picture marked as Exhibit "2(a)".

One of the said two persons is in signing a document. These same two persons together with the Late T. K. Serbeh again appear in the picture marked as Exhibit "2(b)". In this picture, the other person other than the deceased and the person who signed in Exhibit "2(a)" also signs the document.

The Court has had the benefit of seeing one of the persons in Exhibit "2 Series" testifying in this suit from the Witness Box. That person is the 4th Defendant, Francis Kwarteng.

The Plaintiffs did not mount a scintilla of challenged to dispute the persons in Exhibit "2 Series" that, these persons executing documents before them, are not the testator, the 4th Defendant, Francis Kwarteng and Kwabena Agyemang Brobbey.

Exhibit "2 Series" provides documentary evidence of the due execution of the document stated by the Defendants to be the Last Will and Testament of the Late T. K. Serbeh.

Section 3(1) of the Wills Act, (Act 360) provides that, a Will is not valid unless it is in writing and signed by the testator or by any other person at the direction of the Testator.

Sub-Section 3 provides that, the signature of the Testator shall be made or acknowledged by the Testator in the presence of two or more Witness present at the same time.

Sub-Section 5 further provides that, the Witnesses shall attest and sign the Will in the presence of the Testator but a form of attestation is not necessary.

The Court finds that, the statutory dictates of **Section 2(1), (3) and (5) of the Will Act** have been satisfied by the Defendants.

That the Late Timothy Kwame Serbeh at the time he executed the Will was corpus mentis, not suffering from any impairment of mind.

Section 1(2) of the **Wills Act** provides that, a person suffering from insanity or infirmity of mind so as to be incapable of understanding the nature or effect of a Will does not have capacity to make a Will during the continuance of that, insanity or infirmity of mind.

Exhibit “2 Series” debunks and smashes into pieces any claim that, the Testator was a person suffering from insanity or infirmity of mind as to be incapable of understanding the nature or effect of a Will.

The testimony of the 4th Defendant was that, the Late Timothy Kwame Serbeh at the time he gave instructions for the preparation of his Will, was of sound mind and with full testamentary capacity.

In his Evidence-In-Chief, he testified as follows:

“I state that, T. K. Serbeh freely and voluntarily gave the instructions for the preparation of his Will to me and at that time, he was of sound mind and with full testamentary capacity.”

The 4th Defendant was challenged on his testimony. This is the exchanges between him and Counsel for Plaintiff on 25th February, 2025.

“Q: Did you know the health conditions of the Late T. K. Serbeh?”

A: Yes. He was old but strong.

Q: Would you agree with me that, the Late T. K. Serbeh was not of sound mind, was blind and did not know how to read and write?

A: I do not agree with you.

Q: Then I am putting it to you that, the Late T. K. Serbeh was not of sound mind, was blind and did not know how to read and write.

A: It is not true. He was of sound mind. He had issues with his sight. He could see well. He could sign his signature because he was the Managing Director of T. K. Serbeh Company Ltd in Wa.

Q: Considering the age of the Late T. K. Serbeh, do you have any medical report from a Medical Doctor to prove that, he was of sound mind?

A: I do not have. It is the Plaintiffs who are saying that, he was not of sound mind that is not my case. If that is their case that, he was not of sound mind then, it is they who have to bring a medical report.

Q: How old was the Late T. K. Serbeh before he executed the purported Will?

A: He was about 98 years, the Will was valid because he executed it.”

On the above exchanges, the 4th Defendant maintained his testimony that, the Late Timothy Kwame Serbeh was of sound mind and further that, although, he had issues with his sight, he could see well and signed his signature.

The 1st Defendant, one Kwame Appiah also testified, in his Evidence-In-Chief, he testified as follows:

“Even though, the Testator was old, he always demonstrated to me that, at all time material, he was in possession of his mental faculties.”

He testified further.

“The Testator at all time material, bathed himself, ate by himself and communicated coherently so as to be understood by others.”

On 25th February, 2025, this was the exchanges between the 1st Defendant and Counsel for Plaintiff:

“Q: What was your relationship with the Late T. K. Serbeh?”

A: He is my uncle.

Q: How often did you visit your late uncle?”

A: I often visited him.

Q: When was the last time you saw him before he died?”

A: I cannot tell the date but I visited him two to three months before his demised.

Q: Was he of sound mind when you visited him?”

A: *Yes, he was of sound mind and he often sent me on errands to do things for him.*

Q: *I am putting it to you that, the time that, you visited the Late T. K. Serbeh, he was not of sound.*

A: *It is not correct.*

Q: *Would you agree with me that, the Late T. K. Serbeh was also blind?*

A: *He could not see clearly."*

Under Cross-Examination, he maintained that, the Late Timothy Kwame Serbeh was of sound mind when he visited him two to three months before his demise. He testified that, the deceased could not see clearly.

The 3rd Defendant, one Sarah Akua Afriyie Serbeh also testified as follows:

"The Late Timothy Kwame Serbeh in fact died at age 98 and had full testamentary capacity at the time of executing the afore-mentioned Last Will and Testament and tended as Exhibit "1", a copy of the deceased Ghana Card."

On 26th February, 2025, she was cross-examined inter alia thus:

"Q: *How was your father's mental condition before he died?*

A: *He had a very sound mind.*

Q: *Was he able to read and write prior to his death in the English Language?*

A: Yes.

Q: *Considering the age of your father, was he blind before he died?*

A: *He was not blind."*

She also maintained under Cross-Examination that, her deceased father, the Late Timothy Kwame Serbeh was of sound mind.

From the evidence of the 1st, 3rd and 4th Defendants, they, in unison, contended that, at the time the Late Timothy Kwame Serbeh executed his Last Will and Testament, he was corpus mentis not suffering from any impairment of mind.

It is the opinion of the Court at this stage, that, the proponents of the document as being the Last Will and Testament of the Late T. K. Serbeh, the Defendants, have discharged the burden of proof on them to show that, the deceased freely made his Will and that, the Will was duly attested by two Witnesses who were present at the same time. They have also discharged the burden of proof on them to that at the time the said deceased herein executed the document dated 31st January, 2022, he was corpus mentis not suffering from any impairment of mind.

On the authority of **Thomas Tata Atanley Kofigah**, this Court shifts to the party alleging that, the document is a forgery and fraudulent to show that, same does not meet the requirements of the Wills Act. These are the Plaintiffs.

The Court now turns to evaluating their evidence adduced by them to find out whether they were able to successfully discharged the burden.

As stated already, the whole case of the Plaintiffs as per their pleadings, specifically is grounded on the allegation of forgery and fraud.

The Plaintiffs is tasked to proof what they have alleged as forgery and fraud. That is that, the paper writing, they are complaining of as forged and fraudulent was the handiwork of Sarah Akua Afriyie Serbeh and Francis Kwarteng.

Have the Plaintiffs provided evidence that, these two persons forged the thumbprint of the deceased and thereby imputed same to him as his thumbprint when same is not the case.

1st Plaintiff, tendered three Exhibits. Exhibit "A" is a copy of one week observation of the deceased. This Exhibit does not provide any evidence that, the deceased signature had been forged by 3rd and 4th Defendants.

In fact, the Court, struggles to see the relevance of the tendering of a one week observation poster in an allegation of forgery and fraud.

Exhibit "B" is a copy of the funeral brochure. This Exhibit, like Exhibit "A" before it, does not provide any evidence that, the deceased signature had been forged by 3rd and 4th Defendants.

Exhibit "C" is the document, the Plaintiffs dispute as a copy of the Last Will and Testament of the deceased. The 1st Plaintiff did not show how the thumbprint therein is not that of Timothy Kwame Serbeh.

The Plaintiffs also did not provide evidence that, the gifts, bequest or devises contained in Exhibit "C" are not the deed of the deceased herein and how they are forged or are fraudulent.

They also provided no evidence that, at the time of executing Exhibit “C”, they refer to as “paper writing” the deceased herein did not possess the mental acumen to make the gifts, bequest or devises.

Exhibits “A”, “B” and “C”, the documentary evidence of the Plaintiffs does not provide support for their allegations of forgery and fraud in accordance with **Section 13 of the Evidence Act**.

According to the Plaintiffs, the “Will” was not interpreted to the deceased herein even though, the 3rd and 4th Defendants claimed to have so done.

In Exhibit “C”, there is a jurat. It states as follows:

*“IN WITNESS WHEREOF, I, TIMOTHY KWAME SERBEH, THE TESTATOR
HEREIN HAVE THIS 31ST DAY OF JANUARY 2022 SET MY HAND AS MY
LAST WILL AND TESTAMENT.*

<i>SIGNED by the within-named TIMOTHY</i>	<i>}</i>	
<i>KWAME SERBEH as his Last Will and</i>	<i>}</i>	
<i>Testament in the presence of us both</i>	<i>}</i>	<i>R</i>
<i>Present at the same time after the</i>	<i>}</i>	<i>T</i>
<i>Contents herein had been read over interpreted</i>	<i>}</i>	<i>Mark P</i>
<i>by Francis Kwarteng</i>	<i>}</i>	<i>.....</i>
<i>Two language because of his sight</i>	<i>}</i>	<i>TESTATOR</i>
<i>problem when he perfectly understood same</i>	<i>}</i>	
<i>and approve of its meaning before</i>	<i>}</i>	
<i>affixing his or thumbprint in the presence</i>	<i>}</i>	
<i>of each other have hereunto</i>	<i>}</i>	
<i>subscribed our names and signatures</i>	<i>}</i>	
<i>as attesting witnesses to the execution</i>	<i>}</i>	
<i>of this Will and Testament:</i>	<i>}</i>	<i>”</i>

The Plaintiffs did not provide evidence that, the jurat found in Exhibit "C" was not what took place. Exhibit "C", according to the 4th Defendant, was interpreted to the deceased herein in the Twi Language and he perfectly understood same before affixing his thumbprint in the presence of the Attesting Witnesses.

The fact around the Jurat was not discredited by them neither did they produce some evidence to debunk the jurat and show same as a forgery.

The Plaintiffs from the evidence before the Court, did not proof their claim that, 3rd and 4th Defendants stamped the alleged Will with the stamp/seal of Holy Trinity Chambers when the Chambers did not authorised, consented or mandated.

The Plaintiffs failed to call anyone from the said Chambers to provide evidence that, it did not authorised the stamping of the document, that is Exhibit "C". In any event, the Court agrees with Learned Counsel for the Plaintiff that, a stamp or signature of a Lawyer does not even establish the validity of a Will.

The Court asserts that, the Wills Act does not even mention the designation "Lawyer" and a requirement that, a Will should have a stamp of a law firm and a signature of a Lawyer on it as a pre-condition for its validity.

The Court finds by reason of the foregoing that, the Plaintiffs failed to comply with **Section 10(1) of the Evidence Act** to establish a requisite degree of believe concerning their particulars of fraud in the mind of the Court.

Further, the Plaintiffs failed to comply with **Sections 11(1) of the Evidence Act** to introduce sufficient evidence on their claims of forgery and fraud to avoid a ruling against them on same.

Section 13(1) of the Evidence Act requires that, an allegation of the Commission a Crime by a party, in this case, alleged against 3rd and 4th Defendants in a civil suit as present, must be proved with the standard of proof beyond reasonable doubt.

Fraud or forgery is a sin against the administration of justice. It vitiates everything.

See the case of **Tropical Mineral Co Ltd & Edward Kusi Awuah [2008] JELR, 67659, CA.**

The Court finds that, the Plaintiffs did not discharge the high burden of proof beyond reasonable doubt in this civil suit per their allegations of forgery and fraud as is statutorily required under **Section 13(1) of the Evidence Act NRCD 323.**

The Plaintiffs claimed that, the deceased was blind. No medical proof of blindness was introduced in evidence by them. It is they who asserted the alleged blindness.

In fact, PW1, Mary Antwi also known as Ama Mary, testified that, after T. K. Serbeh executed Exhibit "C", he informed her when he, T. K. Serbeh came home. This is what Ama Mary said under Cross-Examination:

"Q: And indeed, after he executed Exhibit "C", which is his Will,

in early part of the year, 2022, he informed you when he came home that day, per your own testimony at paragraphs 11 and 12 of your Witnesses Statement. Is that not so?

A: That is so."

From Ama Mary's testimony, the Court is persuaded that, Exhibit "C" is the deed of T. K. Serbeh. He could not have informed Ama Mary that, he has executed his Will if he was blind and further if same was not interpreted to him in the Twi Language, that he understands.

Ama Mary puts this beyond doubt as follows:

"Q: To your knowledge, did the Late T. K. Serbeh any step to revoke the Will in executed in any part in the year 2022?

A: He told me that, he does not remember making another or a new Will in place of the one in issue.

Q: The Late T. K. Serbeh did not revoke the Will in issue because it fully expressed his testamentary wishes and desires?

A: He did not revoke the Will because his wishes and desires were expressed in the Will he executed but not the new Will."

The Court hastens to say that, apart from Exhibit "C", no other document was introduce in this suit to rival that Exhibit "C".

In concluding with Ama Mary's testimony, the Court asks, who is Ama Mary. This is what she says of herself:

"I was less than 12 years of age when the Late Opanin T. K. Serbeh (Nana Serbeh) adopted me to live with him as a house help."

She continued:

"I lived with Nana Serbeh for over 30 years as his house help mostly in WA; and I also became his primary caregiver in his old age."

She further continued:

"I was thus very closed to the Late Nana Serbeh and so, he told me most of his deepest secrets."

For this Witness with whom, the deceased in his life time shared his deepest secrets with, how can she not be believed, if she says that, after T. K. Serbeh executed Exhibit "C", he told her when he came home after doing so.

This testimony of the Plaintiffs' own Witness corroborates the Defendants case that, Exhibit "C" is the deed of the Late T. K. Serbeh. In fact, when T. K. Serbeh made up his mind to make a Will, Ama Mary was one of the people he informed.

Again, even before the Late T. K. Serbeh made up his mind to make a Will, he informed Ama Mary also that, he was going to give the Asokwa House to her child, name Afriyie.

Ama Mary herself said so in open Court under Cross-Examination as follows:

“Q: In fact, when he made up his mind to make a Will, you were one of the people he informed per your own testimony?”

A: That is so.

Q: In fact, according to your testimony, even before the Late T. K. Serbeh made up his mind to make a Will, he informed you that, he was going to give the Asokwa House to your child, named Afriyie. Is that not so?”

A: That is so.”

This Testimony is in sync with Exhibit “2 Series” in proof that, T. K. Serbeh executed his Last Will and Testament per Exhibit “C”.

Decisional Law is that, where an adversary has admitted a fact advantageous to the case of his opponent, that opponent does not need any better evidence of estoppel by conduct and this is a rule whereby a party is precluded from denying the existence of some state of facts formerly asserted. That type of proof is a salutary evidence based on common sense and expediency.

See the case of **In re: Asere Stool; Nikoi Olai v Amontia IV (Substituted by Nii Tafo Amon II) v Akortia Oworsika III (Substituted by Laryea Ayiku III) [2005 – 2006] SCGR 635 SC.**

The Plaintiffs did not provide evidence in proof that, Exhibit “C” does not meet the statutory requirement of the **Wills Act**.

The Court finds that, the said paper writing dated 31st January, 2022, which is Exhibit “C”, is the act of Timothy Kwame Serbeh (deceased) and that, the said paper writing

is not a forged document. Further, the 3rd and 4th Defendants did not forge Exhibit “C” nor acted fraudulently intended to allegedly deceive and benefit 3rd Defendant.

The Court further finds that, the Late T. K. Serbeh in Exhibit “C” is the Testator and that, he had the requisite testamentary capacity at the time of executing Exhibit “C”, his Last Will and Testament.

The Court also finds that, the Will of the Late T. K. Serbeh, Exhibit “C” dated 31st January, 2022, conforms with the formalities of a valid Will as require by the Wills Act.

The Plaintiffs claims against the Defendants endorsed on the Writ are refused and their action is dismissed in its entirety.

The Court ends this delivery by appreciating the parties and their respective Lawyers for the expedition with which this suit has been concluded in this Court. The whole trial of this suit took three (3) days, even though, a number of persons testified.

Further, the Court commends Learned Counsel in this matter for the expedition with which they filed their respective Written Address and erudition of the Address.

Costs follows the event but the Court will not award costs against the Plaintiffs as losing parties in this suit in favour of the Defendants. This is because, aside one or two of the parties, who are strangers to the Late T. K. Serbeh’s family, the rest of the parties are siblings.

This Court, is sad that, as siblings, they have to come to Court to litigate over the properties their beloved father worked hard or tirelessly in various parts of Ghana to acquire.

It is the prayer of this Court that, the family of the Late T. K. Serbeh will not be torn apart by disunity over his Estate or properties he left behind but be always united.

(SGD.)

**H/L JUSTICE CHARLES KWESI BENTUM
(JUSTICE OF THE HIGH COURT)**

LEGAL REPRESENTATION:

Ernest Ofori holding the brief of Kofi Addo for the Plaintiffs.

Flavin Gai with Abdul-Rashid Osman holding the brief of Mujeeb Rahman Ahmed for the Defendants.