



Eastern Caribbean Court of Appeal enforces Qatari Royal Family oral will

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A judgment, regarding issues of res judicata and the enforcement of a foreign oral will over BVI shares, and of particular importance to contentious private wealth practitioners, was handed down in the Eastern Caribbean Court of Appeal on Wednesday 23 March 2022. Justices of Appeal Michel, Webster and Baptiste found in favour of Ogier's Respondent-clients, who acted along with Maurice Turner Gardener and led by Bajul Shah of XXIV Old Buildings. The court dismissed the appeal and affirmed the decision of Justice Ellis in the BVI High Court below.

In this judgment, the Court of Appeal (i) affirmed the law on res judicata and issue estoppel in the context of complex cross-border succession proceedings, (ii) made a clear statement as to the application of the common law and how it determines the governing succession law applicable to moveable and immoveable property in the BVI, and (iii) clarified the status of BVI shares as moveable property against the background of the statutory situs provisions in the BVI Business Companies Act.

Sheikh Saoud Mohammed A.A. Al Thani (**the Deceased**) died on 9th November 2014 in London. After his death, an entry was discovered in the Sharia Court register having been made and signed by a judge and issued by the Registry in Qatar on 11th June 1990. By this oral will, the Deceased devised 20% of his movable and immovable estate to the respondents who were his sister, niece and 'right hand man' (**the Respondents**).

Following proceedings initiated in Qatar on 25 June 2015 and two unsuccessful appeals by the Deceased's widow and daughter (**the Appellants**), the Court of Appeal and Court of Cassation in Qatar both upheld the oral will. In 2015, during the course of these Qatari proceedings, the Deceased's wife and daughter also obtained ex parte letters of administration in the BVI for the Deceased's estate without revealing the existence of the Qatari will.

At first instance Justice Ellis ordered:

1. the judgment of the Qatari Court of Appeal dated 29 January 2018 decreeing the Will of the

Deceased dated 11th June 1990 as valid and enforceable is also conclusive as to the validity and enforceability of the Will in the BVI for the disposal of the Deceased's moveable property located in the BVI

2. the Appellants are estopped by the judgment of the Qatari Court of Appeal dated 29th January 2018 from contending that the Will is not valid or enforceable in the BVI for the disposal of the Deceased's moveable property located in the BVI; and
3. the Deceased's moveable property located in the BVI includes the registered shares of a BVI company

The issues for the Court of Appeal sitting in the BVI were:

1. Whether the appellants are estopped from contending that an oral Will is not valid and enforceable in the BVI, which issue was not raised before the Court of Appeal in Qatar
2. Whether section 245 of the BVI Business Companies Act establishes that registered shares in a Virgin Islands company are immovable property

The Court of Appeal held:

- The issues in the Qatar proceedings and in the BVI proceedings which are materially identical, ought not to be re-litigated. A party is not allowed to re-open litigation in later proceedings on matters that have already been adjudicated upon by a court of competent jurisdiction in earlier proceedings between the same parties or their privies, due to the doctrine of res judicata. The exception to this, where new material has come to light, did not apply in this case.
- The common law principles are the basis for establishing the validity and enforceability of foreign wills in the BVI. A foreign-domiciled person who dies owning assets in the BVI, will have succession and administration of immovable property located in the BVI determined by BVI law, whereas the law of the foreign domicile will determine the succession and administration of movable property located in the BVI.
- Registered shares in a BVI company are movable property and their distribution on succession must be in accordance with the law of the deceased testator's domicile. Section 245 of the BVI Business Companies Act does not transform the nature of shares in a BVI company to immovable property. The situs of the ownership of shares is the BVI for the purposes of determining matters relating to title and jurisdiction, but this principle does not extend to other matters such as succession.

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