Browne Jacobson

Funeral arrangements dispute: Otitoju v Onwordi

03 April 2025 Daniel Edwards

"A very sad dispute" about funeral arrangements; HHJ Paul Matthew's opening remarks in his judgment in the case of Otitoju v Onwordi.

This was a case, or two linked cases in fact, in which family members of the deceased argued over who had the right to possession of the body of the deceased (Peter Otitoju) and to make arrangements for his funeral.

Funeral arrangements disputes: The law

The question of who has the right to possession of the deceased body has come before the courts on numerous occasions over the years.

It was first held in Williams v Williams [1880] that there is *"no property"* in a corpse, unless it has undergone some process (such as dissection or embalming) as a result of which it (or part of it) acquires a value in itself. That decision was cited more recently in recently, Dobson v North Tyneside Health Authority [1996].

However, a body does need to be properly disposed of and for that purpose only, a person who is responsible for disposing of the body has the right to possess it. The following people are responsible for disposing of the body.

- The personal representatives, if the deceased leaves a Will, or the Administrator if the deceased dies intestate.
- The parents of a deceased child.
- A householder in whose premises the body lies (including a hospital authority).
- The local authority for the area in which the body was found (if no other arrangements are made).

There is no 'order of priority' with these categories, so situations do arise where more than one person may have the right to deal with the body for the purposes of proper disposal. Similarly, cases sometimes arise where co-executors, or parents, for example, cannot agree on how to proceed.

Otitoju v Onwordi: The claims

The claimant in the first claim (Ms Otitoju) was the deceased's daughter. She was also the defendant in the second claim.

The defendant in the first claim (Ms Onwordi) was the deceased's partner, to whom he was not married.

The claimant in the second claim was Ms Onwordi's daughter (Ms Adesanya).

Ms Otitoju issued her claim against Ms Onwordi seeking an order that she was entitled to possession of her father's body, to make arrangements for its disposal, and for a limited Grant of Letters of Administration. She supported her application by a witness statement, in which she submitted that her father died intestate.

The claim came before Roth J, who granted an injunction, restraining Ms Onwordi from taking possession of the body, and confirming that Ms Otitoju was entitled to remove the body for the purposes of a funeral.

In response, Ms Onwordi issued an application under her liberty to apply, for an order setting aside the order. She claimed that she had not been notified of Ms Otitoju's claim until after the hearing. She also stated that the deceased had in fact made a Will in the months

before he died and exhibited a copy of that document to her witness statement made in support of her application. The Will appeared to be signed by way of a fingerprint rather than a signature, and witnessed by Ms Onwordi's daughter (Ms Adesanya) and a nurse. The executors in the Will were Ms Adesanya and another third party.

The second claim, by Ms Adesanya against Ms Otitoju, sought an order preventing Ms Otitoju from taking possession of the body, and declaring that the executors of the Will (including her) were entitled to possession for the purposes of the funeral.

Three key issues

1. Validity of the Will

The validity of the Will was key to determining the validity of Ms Adesanya's appointment as an executor, which in turn would (or would not) give her a right to possession of Mr Otitoju's body.

Ms Otitoju put forward various factors and points of evidence in support of her case that the Will was invalid. These included:

1. That she and her siblings had no knowledge of the Will;
2. That the Will contained many errors;
3. That the fingerprint was not the deceased's, and that he was an educated man, capable of writing his own name;
4. She questioned his capacity to understand and approve the Will; and
5. She said the Will could not have been executed on the date stated, as the nurse who witnessed the Will appeared not to have attended work on that day, and in any event hospital policy prohibits the execution of Wills in the hospital.

Unfortunately, no application was made for any of the witnesses to be cross examined on their witness statements, which posed some difficulty for the Court. HHJ Paul Matthew therefore considered the applicable law on execution:

> (a) Where a Will, regular on the face of it and apparently duly executed, is presented before the Court, the presumption is that everything was properly done and that the requirements of the statute have been duly complied with.
>
> (b) Whilst not the standard way of signing a Will, a testator does meet the requirement of s.9 of the Wills Act 1837 by affixing a fingerprint if he intends thereby to authenticate the Will by doing so; Re Estate of Finn [1935].

The court therefore saw no reason to depart from the presumption that everything was properly done and the Will valid.

2. Capacity of the deceased

On the issue of capacity, reference was made to Williams, Mortimer and Sunnucks on Executors and Administrators which says, at [10-26], *" … if the will is rational on the face of it and is shown to be duly executed and no other evidence is offered, the court will pronounce for it, presuming that the testator was mentally competent"*. Again, the court saw no reason to find capacity was an issue.

As for knowledge and approval of the content of the Will, in Gill v Woodall [2011] the Court of Appeal held that where a Will had been professionally prepared by a solicitor, duly executed, and read over to a testator before signing, a strong presumption arose that the Will represented the testator's intentions at the relevant time, namely at the point of its execution. The burden of proof lies with the defendant to prove the contrary, and the same applies with any assertions of undue influence.

Considering the evidence put before him, HHJ Paul Matthews noted the limitations on the court, because no application had been made for the witnesses to be cross-examined. On that basis, he had no reason to depart from the presumption that the Will was valid, and in turn find that the Executors appointment was valid. It followed then that the Executors had the right to possession of the body for the purposes of arranging Mr Otitoju's funeral.

3. Section 116 and special circumstances

However, the court added that this principal is subject to the power of the court under section 116 of the Senior Courts Act 1981, which provides as follows:

> *"(1) If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who but for this section would in accordance with probate rules have been entitled to the grant the court may in its discretion appoint as administrator such person as it thinks expedient.*
>
> *(2) Any grant of administration under this section may be limited in any way the court thinks fit".*

There was much commentary in the judgment about the courts authority under section 116, including a review of various cases where it has been considered in the past; Re Taylor (deceased) [1950], Re Clore [1982] and Ganoun v Joshi[2020].

The court considered whether or not there were any ‘special circumstances’ that would justify the court introducing their jurisdiction under section 116. On the evidence and question placed before the court in the case, it concluded that there were no such ‘special circumstances’ that would overrule the right of the Executors to possession of the body for the purposes of its proper disposal.

The judgement

In his judgement HHJ Paul Matthews said that he *"must conclude that, solely for the purposes of the decision which I must make today concerning the person who should have charge of making the funeral arrangements for the deceased, the will has validly appointed Ms Adesanya and Mr Kibindo as the deceased's executors, and, prima facie, it is for them to decide on the funeral arrangements."*

He added however that his decision would not have any impact on any probate challenge that may materialise in the future.

Contact

Daniel Edwards

Partner

daniel.edwards@brownejacobson.com

+44 (0)330 045 2533

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