THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2025/0093

BETWEEN:

IN THE ESTATE OF ASOT ANTHONY MICHAEL, DECEASED

[1] NIGEL EUGENE MICHAEL

Claimant

and

[1] TERESA-ANNE MICHAEL

[2] SORAYA WINNIE MICHAEL

Defendants

Appearances:

Mr. Hugh Marshall Jr and Ms. Kema Benjamin for the Claimant

Mr. Anthony Astaphan SC with Dr. Errol Cort and Ms. Alketz Joseph for the Defendants

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2025: July 17th

September 1st

DECISION ON INTERLOCUTORY RELIEF

[1] **BYER, J.:** On the 6th March 2025, the claimant commenced this action against the defendants seeking inter alia declarations against the validity of a last will and testament of Asot Michael (the deceased). The defendants having filed an acknowledgment of service, filed their defence thereto on 8th April 2025,

and thereafter without the permission of the court as the matter had not yet been heard at case management, an amended defence on 15th April 2025.

[2] The claimant thereafter filed a reply to the amended defence on 9th May 2025 some 9 days late, the due date for filing being the 30th April 2025. At the first hearing of the matter before this court on the 20th May 2025, the defendants lodged a notice of objection to the late filing of the reply without an application. The court directed the claimant to file an application for an extension of time by 10th June 2025 which they did on the 6th June 2025. That application also sought the leave of the court to amend the reply and to have a Grant ad colligenda bona issued to the claimant to preserve the assets of the estate of the deceased that did not fall under the provisions of the contested will.

[3] By that order of 20th May 2023, the court also gave the defendants leave to respond to any application by the claimant and by application filed the 23rd June 2025, rather than respond to the application as filed by the claimant, the defendants filed an application to strike out portions of the reply as filed (if the same was deemed properly filed), to strike out portions of the proposed amendments and to have the issue of a Grant ad colligenda bona made to the defendants rather than the claimant inter alia based on the fact that they were named as the executors in the contested will and that they were better suited to the task than the claimant who did not have a genuine wish to administer the estate of his father the deceased but rather to use the grant as a means to access and utilise assets.

[4] Thus the matter that falls to be determined by this court are namely three applications

i. the Notice of application filed the 6th June 2025 seeking an extension of time to file the reply late (objected to by the defendants who also seek to strike out portions of the reply by notice of application filed 23rd June 2025),
ii. Notice of application filed the 6th June 2025 for leave to amend the reply as filed (objected to by the defendants that the amendments inter alia are outside the parameters of what a reply should contain)
iii. Notice of application filed 6th June 2025 for the issuance of a Grant ad colligenda bona to the claimant and cross application for the same Grant to the defendants filed on the 23rd June 2025.

Grant ad colligenda bona

[5] The court will deal with this aspect of the two applications before the court before it deals with the issues surrounding the reply.

[6] In that regard for the record, the court is unsure why the defendants found it necessary to file their own application for the Grant to be issued to them rather than the claimant as opposed to making their claim in an affidavit in response to the application filed by the claimant. There could not have been any other reason in this court's mind save costs consequences and this court shall consider that when it makes its determination on this issue.

[7] The nub of the basis of the application filed by the claimant lies in his unswerving position that not only is the contested will null and void for a myriad of pleaded reasons but also that the said document failed to make any provision for certain aspects of the estate of the deceased. At paragraphs 25, 26 and 27 of the affidavit in support filed on the 6th June 2025, the claimant clearly stated that there are parts of the estate of the deceased that were not part of any residuary clause and as such fall to be dealt with under the provisions of the law of intestacy which need to be "secured and protected". In both written and oral submissions counsel on behalf of the claimant reiterated this position and made it clear that the defendants being the sisters of the deceased having already intermeddled in the estate where they had no rights of claim under the estate and do so with no accountability to any one should be clearly restricted in their dealings. Indeed the claimant also submitted to the court that in invoking the protection of the court by the granting of this limited grant would be solely to protect the assets of the deceased that are actually provided for under the contested will and there would be no need to expand the same to those assets that would be dealt with under the law of intestacy.

[8] In response the defendants in support of their application which in essence was an objection to the application by the claimant, sought to persuade this court that they would be the better parties and in particular to the 1st defendant. The defendants supported this application by submissions in which they contend that it is clear from the position of the claimant that his claim for the grant is one which promotes self-interests over that of the estate of the deceased while they, not ever denying any entitlement of the claimant, have done what they can do to ensure that the estate remains intact including the expenditure of their own funds. Indeed they submitted to the court the criteria for this grant is not based on entitlement but on trustworthiness and reliability which they have consistently displayed in all their dealings with the estate of the deceased as they seek to maintain his estate and legacy.

Court's decision

[9] It is clear to this court and from the very authorities relied on by both parties in this regard, that the Grant ad colligenda bona is one which is made in very exceptional circumstances which must be established on the evidence presented. The crux of the nature of this Grant is that there must be clearly stated that there is more than a mere need or even desire to gather in the estate, but rather there must be an essential and clear urgent need, to meet the necessities of the estate.[1]

[10] Therefore, it is not simply that one or other person or party believes that there are matters connected to the estate which require some consideration and even handling but rather there is a real need as opposed to a perceived need to act.

[11] When this court therefore considers the nature of the evidence that was led by both parties on their respective applications, it was unquestionably clear that the evidence did not meet the threshold of any matter that needed to be dealt with to prevent waste or dissipation of the assets of the estate of the deceased. Rather both parties, couched as it may have been for the benefit of the estate clearly wished to limit the other party to access or even concern for the assets of the estate. In particular this was most evident in the evidence of the defendants who as the named executors in the contested will sought to persuade this court that they were the more suitable persons but failed to show this court one scintilla of evidence why this Grant should be made and that the interests of the estate could not await the issue of a grant to the whole estate.[2]

[12] That being said, this court is satisfied that neither the claimant nor the defendants have met the high threshold of making an order for a Grant ad colligenda bona and as such both applications in relation to this relief stand dismissed with no order as to costs on that portion of the application

Extension of time application

[13] The court will now go on to consider the application for an extension of time for the late filing of the reply that was filed on 9th May 2025.

[1] Tristram and Cootes Probate Practice Part 1(32nd ed 2024) paragraph 25.182
[2] Ibid at paragraph 25.183

[14] As indicated earlier in this decision this court accepts that the reply filed by the claimant on the 9th May 2025 was in fact filed 9 days late and not 24 days as indicated by the defendants. The defendants seem to have forgotten that the date for the filing of the reply would have had to take into account the 14 days as provided for by Part 10.9 (1) which gives the claimant 14 days to file a reply. The reply would therefore have been due on or before the 30th April 2025.

[15] Having failed to file on that date, Part 10.9 (1) also provides that a reply can be filed at any time with the permission of the court and the court would in those circumstances have to consider how it can exercise its discretion on the evidence filed in support of the application.

[16] By affidavit of the claimant, the claimant put forward essentially three reasons why the reply was filed late. 1) The claimant stated that he did not in fact receive the emailed amended defence from his attorneys until the 24th April. 2) The claimant also stated that having received the amended defence that was the first time that he was seeing the contested will and had to consider that and what the defence said in relation to the claim as filed. Having seen the terms of the will there were certain devises which he had to seek information on including a parcel of land purportedly left to him which was not in fact owned by the deceased at the time of the said will and 3) that he had sought instructions and information from the witnesses to the will who insisted on seeing the actual will and not just a summary form of the same. As a result these matters combined in the late filing of the reply.

[17] The defendants have objected to this application on the basis that the claimant on the 24th April would have known that he would not have been able to file by the 30th April and should have filed an application then, but rather he waited a further month from the date of filing to file the application. Additionally, they stated the reason preferred by the claimant that that was the first time that he had seen the contested will was an obvious misrepresentation since it was clear from the statement of claim that the claimant had seen the contested will and made references to it. Finally, the defendants objected to the application stating that if indeed the claimant was seeking information from the witnesses to the contested will that that would or should have been contained in the reply as filed on the 9th May and it was not.

Court's decision

[18] In relation to the law on the factors that a court must consider on the granting of an extension of time, both parties addressed the court on the correct applicable law but came to different conclusions on the case at bar.

[19] That being said, it is now trite law that where there is no sanction to be applied for the failure to adhere to a procedural rule, that the court's jurisdiction is conferred by Part 26.1(2) (k) as a case management discretion in the circumstances of the matter which include the length of the delay, the reasons for the delay, any prejudice to the other party and whether the case as pleaded is a hopeless one.

[20] In addressing its mind to these principles, it is now known that the law in relation to the exercise of the court's discretion on an application to extend time has long been settled and nowhere as most recently in the decision of our court of appeal in **Electrical Associates Ltd and anr v Wesley J. Hall and ors** [3]in the judgment of Ellis JA. In that case the court reiterated that the when the court considers its discretion it must not do so in a vacuum but in accordance with the well-established principles with a view to giving effect to the overriding objective. [4]

[21] Bearing that in mind the court has already determined that the length of the actual delay in filing was 9 days. This in this court's mind is not an inordinate amount of time although it did take the claimant another 28 days and at the prompting of the court to file the application for the extension of time. It must be noted however, that the court on the 20th May 2025 had given that time frame within which to file the application and in this court's mind that additional time should not count against the claimant to consider that it was an inordinate amount of time.

[22] In relation to the reason for the delay given by the claimant it has been stated that the reason given does not have to be an infallible one or subjected to such scrutiny so as to require perfection[5] but in order to assess whether the reason is a good one, the applicant is required to condescend into particulars in order for the court to determine whether they have met the threshold.[6]

[23] In this court's mind it is clear from the evidence that was filed in support of the application that the time between the actual filing of the reply and the date of the reply that the claimant had been taking active steps to obtain information in order to respond to certain allegations contained in the defence. However, it was also clear that contrary to the statement that the claimant had seen the contested will when it was attached to the amended defence it is clear from the pleadings in the statement of claim filed in this matter that the claimant would have had some intimate knowledge as to not only the circumstances when

[3] SLUHCMAP2024/0001
[4] Ibid paragraph 51
[5] **Rawti Roopnarine v Harripersad Kissoo** Civil Appeal No 52 of 2012 CA 2011-15 at page 13 per Mendonca JA
[6] **Electrical Associates** Supra at paragraph 55

the contested will was made and executed but that the formalities to which a will must adhere were missing. In this court's mind the clear inference must be that the information could only have come from having sight of the will in whatever form. Be that as it may, the court accepts that there is sufficient information contained in the affidavit in support such that even without the reliance on the "first time seeing the will" ground, that the claimant has proffered a good explanation.

[24] On the issue of prejudice, this court cannot decipher any real prejudice to the defendants if the court were to allow the reply to be deemed properly filed, this is of course without prejudice to the defendant's continued objection to content which this court can only consider if the document is deemed properly filed. At that point the question of the content must be considered. This late filing in the round has however not caused any significant delays in the matter as the parties are still far from the matter being ready for trial given the plethora of applications emanating from this litigation.

[25] The final point about success of the pleading took up little of the submissions of the claimant, and they simply submitted that from all the documents filed in the matter thus far that they had a good chance of success on a meritorious claim. The defendants on the other side sought to make the submission that the reply being optional would not offer any real assistance to the claimant in any event and that the information contained in the reply was of such a nature that should be removed from it in any event. While this court agrees that a reply is not strictly speaking necessary and if there is any information not specifically dealt with in answer to the defence, the claimant is still taken to require the defendant to prove its statements contained in the defence.[7] However it is also clear that if the claimant wishes to deal with particulars in the defence that is within the context of the reply that is required to meet the allegations contained in the defence and which all form part of the statement of case of the claimant.[8]

[26] In the round, this court finds that the claimant has met the threshold of the exercise of the court's discretion in his favour and I find that the reply filed on 9th May 2025 is properly filed. However the form of the reply is of great concern to the defendant. This court intends to deal with the strike out of the paragraphs as sought by the defendants in relation to whether there is a defence in its present form or the amended defence as sought to be filed. I will therefore deal with the application to amend the reply which was first in time and then deal with the application to strike out paragraphs of the reply as contained in what may become the amended defence, which depends on the court's determination.

[7] Blackstone Civil Practice 2008 Chapter 27 paragraph 27.1
[8] **Daphne Alves v The Attorney General of the Virgin Islands** BVIHCV2007/0306

Application to amend the reply

[27] By Notice of application filed 6th June 2025 the claimant also sought to amend the reply. To the Notice of application, the claimant attached the draft amended reply. The grounds for the said amendment were stated as follows: 1) the application was made pursuant to Part 20.1 (2) and (3), 2) that the contested will mentioned gifts to the mother of the deceased who predeceased the deceased and as such those gifts failed and that point of law needed to be pleaded which was not contained in the original reply and 3) that there were certain gifts which had been left to the mother of the deceased and then to the defendants on her death, these gifts were subject to the doctrine of lapse which also needed to be specifically pleaded.

[28] In support of the application the claimant filed an affidavit and at paragraphs 21 to 24 of the affidavit filed on the 6thJune 2025, he reiterated the grounds set out in the application and stated that the amendments were needed to have the matter fully ventilated before the court.

[29] The defendants once again objected to the application for the amendment and by affidavit filed on 23rd June 2025, they cited as their objection that the amendments sought changed the case of the claimant substantially and as such would be severely prejudiced as by law they had not right to reply thereto. Further the amendments as sought also simply sought to bolster assertions already made in the statement of claim which was not permitted by the rules of procedure applicable to the contents of a reply.

[30] In the submissions of the parties, they both identified that the correct rule of procedure governing the amendment of the reply would be Rule 20.1 which permits such amendments to the statements of case of which the reply under Part 2.4 is considered part. However the divergence comes when the defendant adamantly submitted to the court that any such amendment as proposed by the claimant would substantially change the case which they have had to meet and as such they would be unable to meet the legal aspects of the reply that are now being raised and in particular the reliance on the doctrine of lapse as it relates to the gifts devised.

[31] The claimant however stated in their submissions that they made the application as soon as it was apparent that the nature of the case had to change, in order for the claimant to prosecute his claims in relation to the gifts made to the mother of the deceased.

[32] The claimants in their submissions also identified 7 discrete issues for the reason to allow the amendment as follows

i. To solidify the claimant's claim that the intention of the will was to apologise to his mother
ii. Solidify the claimant's claim that the contested will was not found in the safe of the deceased
iii. Set out the deceased's battle with alcohol and which supported the claim that he was intoxicated at the time he made the will
iv. Refute the allegation that one of the witnesses to the purported will was in fact present when the will was signed
v. Set out instances of intermeddling
vi. Refute the claim that the jewellery kept in the safe at the deceased's home was the personal items of the defendants
vii. Establish the impossibility of the claimant being in a position to remove anything from the deceased's safe

[33] The claimant therefore submitted that the amendments should be allowed and there would be no undue prejudice to the defendants as they could respond to the allegations in witness statements but if they were not allowed to make the amendment, then the claimant would be hampered in adequately having his claim before the court.

Court's decision

[34] By Part 20.1(2) CPR 2023, a party is entitled to file an application at any time to seek the permission of the court to amend their statement of case. However, the court is mandated to consider the application in light of 20.1(3), that is

i. How promptly the applicant has applied to the court after becoming aware that the change was one that he wanted to make
ii. The prejudice to the applicant if the application is refused
iii. The prejudice to the other parties if the change were permitted
iv. Whether any prejudice to the other party can be compensated in costs and or interest
v. Whether the trial date or any likely trial date can still be met if the application is granted
vi. The administration of justice.

[35] In this court's mind the applicable considerations for this court on this application are (i) (ii) and (iii). That as far as this court can assess, if the permission is allowed, costs would not be payable as the defendant

would not then be put to expense or have any consequential costs to make any changes to any pleadings or other documents before the court as the pleadings would now be closed. Having responded to the application however, it is in the discretion of the court whether costs would be payable on any basis. Further the matter is not close to any trial date as the matter has only just begun and has not even progressed to case management directions and finally the factor of the administration of justice must be balanced with the prejudicial effect if any if the amendment is allowed.

[36] Thus, the starting point must be how promptly did the claimant make the application. In this regard this court accepts the proposition that the time to assess promptitude is not when the claimant could have made the change but rather when the claimant was aware that it was a change he wanted to make.[9] The evidence before the court is that upon receipt of the defence filed by the defendants that he became aware of the precise nature of certain gifts that had been made to the mother of the deceased and which he was then advised could not be effective. The application was filed within the time given by the court for the filing of the application for an extension of time. In this court's mind the lack of promptness of the application in these circumstances is not one that can be held against the claimant.

[37] Therefore, the nub of the court's consideration must be the relative prejudice to the parties.

[38] Although it is generally agreed by the authorities that amendments should be allowed to ensure that all matters in dispute are before the court for adjudication to prevent duplicity of litigation,[10] in the instant case this general principle must have special significance where the pleading sought to be amended is the reply which means that the defendant would be severely prejudiced if the claimant is permitted to introduce any new claims to which the defendant would have no right of reply.

[39] It is clear from the proposed amendments, when the court considers the draft amended reply, that in addition to the purported amendments itemised in the notice of application which were limited to seeking permission to add the claim of lapse of gifts, that the claimant in fact is seeking to expand on other matters which were in fact included not in the application but by way of submissions to the court. This was a practice eschewed in the **Denise Violet Steven**[11] case where the learned Master at paragraph 26 stated, "for the purposes of the application before the court, any fact upon which either party wishes to

[9] **Denise Violet Stevens v Luxury Hotels International Management** SKBHCV2013/0069 at paragraph 29 per Corbin -Lincoln M

[10] **Mark Brantley v Dwight C Cozier** SKBHACVAP 2014/0027 at paragraphs 55 and 56 per Blenman JA (as she then was)

[11] Supra

rely should be in the affidavits filed by the parties rather than in the submissions since the latter do not constitute evidence." This is particularly apropos in this application as the extent to which the amendment was sought was greatly expanded in submissions as opposed to what was contained in the application and affidavit itself.

[40] When this court therefore considers the proposed amendments, it must be constrained by what is contained in the application and not submissions. Those matters seeking to be pleaded are in this court's mind new claims to which the defendant must have an opportunity to respond. Although it has also been recognised by this court that the English authorities on this rule are of limited assistance[12] I find that the decisions of the courts in the United Kingdom are persuasive and in particular I adopt the words of Pepperall J in the case of **Martlet Homes Ltd v Mullalley & Co Ltd** [13] although discussing the terms of a slightly different regime in the matters of amendments to pleadings and the reply in particular said this;

> "Not only is the proposition that one can advance a new claim in a reply contrary to the clear terms of the Practice Direction, but it is also inherently undesirable and contrary to the overriding objective of dealing with cases justly and at a proportionate cost. If such practice were to be condoned, claimants would not need to be precise in their formulation of the Particulars of Claim since they could always get another bite of the cherry when pleading the reply."

[41] This court must therefore consider that the amendment as sought would therefore be highly prejudicial to the defendant. The claimant, however, does have an alternate option available to them to add what this court must consider is a new claim and a new pleading of applicable law to make an application for an amendment to the statement of claim. Of course, this court makes no determination on how successful such an application would be at this stage of the proceedings.

[42] The application for amendment is therefore refused as far as the application has stated. Any further amendments purported to be advanced by the claimant not covered by the application also stand dismissed.

[43] The court will now consider whether the reply as filed on the 9th May 2025 should now have portions of the same struck out.

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[12] **Ormiston Ken Boyea and anr v East Caribbean Flour Mills Limited** High Court Civil Appeal No.3 of 2004 ; **Denise Violet Stevens** supra

[13] [2021] EWHC 296 TCC

Strike out application

[44] By Notice of application filed on the 23rd June 2025, the defendants sought to have certain paragraphs contained in the reply filed be struck out. The basis of the application for strike out if the reply was deemed properly filed, was that the paragraphs identified failed to comply with the permissible content and scope of a reply.

[45] Indeed the defendant submitted that if the reply filed on the 9th May 2025 was deemed properly filed they sought to strike out paragraphs 2,3,4,5,39,50, 51 and 52 as introducing new allegations, introducing for the first time the question of the validity of gifts left to the mother of the defendants and that the will was a forgery. Regarding paragraphs 10, 18, 34 and 50 that these exceeded the permissible scope of a reply by going beyond the assertions raised in the defence or merely reinforced the allegations already contained in the statement of claim. Finally, they sought the striking out of paragraphs 6, 7 and 11 as containing scandalous or irrelevant information that damaged the reputations of the defendants and the deceased.

[46] The submissions in response to the application for strike out by the claimant, relied primarily on the accepted position in this jurisdiction that the use of the power of strike out is one that is to be used sparingly. Additionally they noted for the court that the defendants had failed to identify which rule or sub rule of the civil proceedings rules that they were seeking the relief sought but submitted to the court that the only feasible sub rule which was applicable was 26.3 (1) (a), which permits a court to strike out pleadings where there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings. They further submitted to the court that in any event, each and every allegation contained in the reply was either necessary based on the new information that came to hand subsequent to seeing the will or were raised by the defendants on their amended defence.

Court's decision

[47] It has been accepted by both sides that the purpose of a reply is as stated in Blackstone's Civil Practice 2008 at paragraph 27.2 , that is a reply;

> "…may respond to any matters raised in the defence which were not and which should not have been dealt with in the particulars of claim and exists solely for the purpose of dealing disjunctively with matters which could not have properly have been dealt with in the particulars of claim but which require a response once they have been raised in the defence…once …a defence has been raised which requires a response so that the issues between the parties can be defined a reply becomes necessary for the purpose of setting out the claimant's case on that point. A reply is however neither an opportunity to restate the claim nor is it nor should it be drafted as a defence to a defence."

[48] Thus in considering the application to strike out, first and foremost this court must accept that the use of the tool of striking out is one that should only be deployed in exceptional circumstances.[14]

[49] For this court to consider whether the complaints of the defendants have risen to the level of exceptional circumstances, it is necessary for this court to undertake a consideration of each paragraph as raised on the application. Additionally, although the defendants failed to identify the provision in the rules which they seek to invoke on the application, this court accepts that in its mind the applicable rule to govern the application must be Part 26.3(1)(c)) in the complaints of the defendants raising both an abuse of process and obstruction to the just disposal of the proceedings. The court will therefore take each paragraph as identified.

Paragraph 2

The claimant contends that the pretend will of Asot Michael deceased dated the 31st March 2021 and annexed to the amended defence is a forgery. The signatures affixed thereto are not the signatures of the deceased and/or the witnesses and is not the document the deceased and the witnesses signed. The claimant will be relying on a handwriting expert to prove that the deceased and witnesses signatures are not affixed to the pretend will.

[50] When the court considers the basis of the statement of claim and the particulars contained therein, the entirety of the case for the claimant was that the deceased did not have the requisite testamentary capacity at the time of making the will due to being intoxicated and that it was never his intention for any such document to amount to his last will and testament. The claimant never made any allegation in the statement of claim about the validity of the will itself. This is a new claim which the defendants would need to answer legally, not in evidence and as such this paragraph is struck from the reply.

Paragraph 3

Furthermore this will purports to make disposition that was not property of nor under the deceased's control at the time of making the pretend will. The property in question is owned by Sarkis (Antigua) management Ltd a company where the deceased is and was the sole shareholder and the deceased and Josette Michael deceased were the sole directors. The deceased and the vendor executed an Instrument of Transfer on the 16th May 2023. The Instrument of Transfer was

[14] **Dylan Bailey v Kenroy John and anr** SVGHCV2013/0201

prepared by Cort & Cort. The company was registered as proprietor in absolute on 24th May 2023. A copy of the instrument of Transfer and land register are annexed hereto.

[51] This paragraph is a clear response to the defendant's reliance on the will as disposing of the assets of the deceased as he dictated them. It clearly avers for the claimant that this could not have happened in relation to a parcel of land that was not owned by the deceased at the time of the execution of the purported will. This paragraph remains.

Paragraph 4

Moreover the pretend will does not make any disposition of the residue of the deceased's estate which would include property described in the Land Registry as Registration Section St John's Central Block 65 1692D Parcel 108 (Nevis street property), bank accounts, shares in various companies and motor vehicles. The gift of cash balance in chequing or savings account left to Josette Michael fails as she preceded the deceased in death and any such sum would remain with the deceased's estate.

[52] For the first time the claimant is raising the legal concept of the doctrine of lapse as it relates to the gifts to the mother of the deceased, a matter which cannot be responded to in the evidence of any witness. This paragraph is amended to remove the words from "the gift of cash balance" to "with the deceased's estate".

Paragraph 5

At the time the deceased was reciting the terms of the will he did not include the registration details of any property. In any event the deceased would have included full particulars of the Dry Hill and High Street properties as he has owned both since 1983 and 1991 respectively. The claimant will state that the registration description of the Sarkis property in the pretend will purportedly is incorrect. In particular, the incorrect block and parcel number are recorded in the pretend will.

[53] This paragraph simply bolsters the claimant's case as to the lack of the requisite capacity and intention on the part of the deceased when he made the pretend will and does not respond to any allegation contained in the defence but rather appears to be a defence to the defence which is not permitted. This paragraph is struck out.

Paragraph 6 – partial

When the deceased became a person of interest in criminal proceedings in the United Kingdom……which was his main bank account.

[54] Although the court accepts that this information may have given some context to refute the allegation in the amended defence that this account did not belong to the deceased, this court does not see the relevance of this particular detail on the criminal liability of the deceased. This is a matter that can be raised in evidence as the basis for denying the ownership of the account by the 1st defendant. Those words are struck out.

Paragraph 7

The deceased wanted the claimant added as a signatory on the said account and gave him the requisite forms to execute. However the claimant was concerned that his association with the deceased's bank account could have legal implications for him in light of the ongoing criminal investigation by the NCA into the deceased. While the claimant did execute the forms and gave them to the deceased, they were never submitted to Raymond Jones. The claimant is prepared to commence proceedings in the courts in the State of Florida for a determination as to ownership of the said Raymond Jones account.

[55] The court accepts that the basic information contained in this paragraph should be given in refuting the allegation of ownership. However, there is no need for the extraneous information and it adds nothing to the reply to include the information as to the why or the intention of the claimant. Therefore, the words "however the claimant "to "into the deceased" and "the claimant is prepared" to "Raymond Jones account" are struck out.

Paragraph 10 -partial

The defendants are aware …..Alcoholism

[56] The court is satisfied that this is the entire tenor of the statement of claim and the basis for disputing the defendants' position that the deceased was sober at the time of making the pretend will or the inference that he had no such issue. The words complained of are to remain

Paragraph 11

The claimant avers that on more than one occasion the deceased while in an intoxicated state caused extensive damage to his residence situate at Dry Hill and his mother's prized possessions to include her crystal and china. The defendants while aware of the deceased's alcoholism were never present at his residence during any of his alcoholic induced episodes. The defendants were infrequent visitors to the deceased's residence and their visits became few and far between after the death of their mother in October 2022. The claimant will state further that either the following day or two days after making the pretend will the [claimant] left Antigua to attend a recovery programme at a facility situate in the State of California.

[57] The court does not see this as being a response to any allegations raised in the defence and the claimant is entitled in his evidence to give as much detail as he may wish in relation to the disease suffered by the deceased having already stated the same as the basis for disputing the pretend will. This paragraph is struck out.

Paragraph 12- partial

The defendant sought assistance ….to apply for Letters of Administration.

[58] This court sees this as a response to the allegation as to the refusal by the claimant to meet with the 1st defendant in particular, he is entitled to say what his understanding of the request for the meeting was and why he did not do so. These words shall remain.

Paragraph 18- partial

That is not a discussion …..Were to prepare a will

[59] This is a direct response to the defendant's allegations that the deceased would have informed the 1st defendant that he was going to disinherit the claimant. He is entitled to say that this is not a position that the deceased would have taken and what he was aware of in relation to the deceased's intentions in making a testamentary disposition. These words are to remain.

Paragraph 34

The claimant will state further that it was the 1st and 2nd defendants who either jointly or severally deliberately dismantled the canopy that was covering the deceased's motor vehicles after his

death for the sole purpose of removing the Maybach and Mercedes jeep to their respective residences. The defendants immediately after the deceased's passing had discussions and decided that the 1st defendant would take the Mercedes jeep and the 2nd defendant would take the Maybach.

[60] This paragraph is a direct response to the allegation in the defence where the 2nd defendant states her reasons for taking the Maybach to her home. It is clear that this paragraph disputes the manner in which that removal occurred, however the court will not allow the claimant to include information which is of limited utility in answering that allegation and as such the words "the defendants" to "would take the Maybach" are struck out.

Paragraph 39- partial

The defendants did not own…..were the defendants' property

[61] This response is in relation to the allegation in the defence where the 2nd defendant avers that if they removed any jewellery that such jewellery belonged to them. It is apparent that the claimant disputes this but to include the additional information as to what may have transpired on a previous occasion goes beyond answering that simple allegation. I would however strike out the words from "this was not the first time" to "if they were the defendant's property."

Paragraph 40

The claimant will further state that the 1st defendant once borrowed a black pearl necklace ring and bracelet set purchased by the deceased for his mother from him to wear to their mother's funeral in November 2022 and refused to return them after the funeral. The deceased and the 1st defendant got into a heated argument via telephone over her refusal to return the borrowed jewellery. The deceased demanded that the 1st defendant return the jewellery which she eventually did. The 1st defendant wore the same black pearl set to the deceased's funeral and has without permission or authority retained possession.

[62] None of the information contained herein is relevant or advances the response to the allegations contained in the defence. The same is struck out.

Paragraph 50 – partial

They without any authority…..insurance company requesting information

[63] This is in direct response to the allegation that the defendants have taken steps to safeguard the estate of the deceased. The claimant is entitled to say that they have not done so but have instead taken steps to dissipate the estate and wield authority they do not have. The words complained of are to remain.

Paragraphs 51 and 52

Prior to his death the deceased entrusted the 2nd defendant on his instructions to make monthly wire transfers from his Raymon James account to one of his accounts in Antigua to meet his needs to include insuring his premises, licensing and insuring his motor vehicles and meeting his payroll. Since his death the 2nd defendant terminated one of the deceased's gardeners after accusing him of passing on information to the claimant about the activities taking place at the deceased's residence since his passing.

Furthermore the deceased instructed the 2nd defendant to add the claimant to his payroll and pay him a weekly stipend. The claimant was the deceased's man of business/aid. Since the deceased's passing the 2nd defendant was wittingly or unwittingly excluded the claimant from the payroll and has failed refused and/or otherwise neglected to pay his stipend as agreed or at all.

[64] This court is unclear as to which allegation these two paragraphs refer and is in agreement with the defendants that these two paragraphs are outside the requirements of a reply and as such these paragraphs stand struck out.

[65] **The order of the court is therefore as follows:**

On the Notice of Application filed on the 6th June 2025 by the claimant

1. The claimant is granted an extension of time to file the reply to the amended defence and the reply filed on the 9th May 2025 is deemed properly filed
2. The portion of the application seeking the Grant ad colligenda bona is dismissed
3. The portion of the application seeking to amend the reply is dismissed

On the Notice of Application filed on the 23rd June 2025 by the defendants

1. The portion of the application seeking the Grant ad colligenda bona is dismissed

2. The portion of the application seeking the strike out of portions of the reply as filed is granted in part as identified in paragraphs 47 through to 64

[66] On the issue of costs, this court is of the considered opinion that some of the reliefs sought on these applications were matters that could have been discussed and compromise positions reached especially as it relates to the extension of time and the appointment of someone to oversee the estate of the deceased while the litigation is ongoing. Having not done so this court is prepared to grant 25% of the costs to the defendants on the application to strike out summarily assessed in the sum of $500.00 to the defendants. No costs are awarded on the applications for the grant of ad colligenda de bona and costs are awarded on the application for the extension of time summarily assessed in the sum of $500.00 to the claimant. No other costs are awarded to either party.

P. Nicola Byer
High Court Judge

EASTERN CARIBBEAN SUPREME COURT
SEAL
HIGH COURT

By the Court

Registrar