

**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

Applicant

and

[1] TERESA-ANNE MICHAEL

[2] SORAYA WINNIE MICHAEL

Respondents

Appearances:

Mr. Hugh Marshall with Mrs Chantal Marshall of Marshall & Co. for the Applicant

Dr. L Errol Cort with Ms. Alketz Joesph and Ms Jada Cort for the Respondents

2026: February 4, 18,

April 22

RULING

[1] **STEPHENSON J. (Ag):** There are now two applications before the court to appoint an expert witness the first one dated the 6th January 2026 filed by the claimant/applicant and the second one 18th February 2026 filed by the defendants/respondents. It is noted that at the second hearing of the first application neither the court nor the applicant had sight of the

respondents' application as this application was filed on the morning of the hearing, so there was no substantive response to the respondents' application.

- [2] In civil litigation the court's role is to decide the issues before it, based on the totality of evidence adduced through both lay and expert witnesses. In some matters expert evidence is required to assist the court in technical and scientific areas as it relates to the factual issues in dispute. Expert witnesses perform a vital role in civil litigation.
- [3] I begin my ruling with some remarks regarding the applications for expert evidence as governed by Part 32 of the Civil Procedure Rules 2023 (Revised Edition) ("CPR").
- [4] Part 32 of the CPR "... deals with the provision of expert evidence to assist the court." The CPR also states that "Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly."¹ The CPR further states that "It is the duty of the expert to help the court impartially on matters relevant to his or her expertise"². Further, "An expert witness must provide independent assistance to the court by way of an objective unbiased opinion in relation to matters within the witness' expertise."³
- [5] The evidence that is to be adduced through the expert witness has to be relevant to the matters in dispute and the evidence must be proportionate in light of the Overriding Objective⁴ of the CPR.
- [6] Part 32.3 which addresses the "Expert's overriding duty to court" states
 - "(1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.
 - (2) This duty overrides any obligation to the person by whom he or she is instructed or paid"

¹ CPR Part 32.2

² CPR Part 32.3

³ CPR Part 32.4

⁴ CPR Part 1.1

- [7] There is no doubt that the expert witness is to maintain his or her independence from the instructing party, and there is no doubt that there can be some difficulty in achieving this independence. The evidence provided by the expert witness should be seen to be independent and uninfluenced by anyone or the exigencies of litigation.⁵ An expert is required to exercise due care and regard to the matters which he or she investigates and the expert must provide opinion evidence which is soundly based.
- [8] Permission for the expert to give evidence is given at case management and in response to an application to the court by a party.
- [9] CPR 32 goes on to make provision as to include:
- a. The way in which the expert's duty is to be carried out to the court⁶.
 - b. The expert right to apply to the court for directions.⁷
 - c. The general requirement for the expert evidence to be given in a written report.⁸
 - d. For written questions to be put to the expert witness.⁹
 - e. For cross examination of the expert witness.¹⁰
 - f. Power of the court to direct a party to provide an expert report.¹¹
 - g. That the report is to be addressed to the court.¹²
 - h. As to the contents of the report.¹³
 - i. The consequences of failure to disclose an expert's report.¹⁴
- [10] Where two or more parties wish to submit expert evidence, there is provision for the court to direct that evidence is to be given by a single expert.¹⁵ The parties can also agree to instruct a single joint expert. The appointment of a single expert is considered to be the more cost

⁵ Re: Whitehouse -v- Jordan [1981] 1 WLR 246 H.L.

⁶ CPR 32.4

⁷ CPR 32.5

⁸ Part 32.7

⁹ Part 32.8

¹⁰ Part 32.10

¹¹ Part 32.12

¹² Part CPR 32.12

¹³ CPR 32.14

¹⁴ CPR 32.16

¹⁵ CPR 32.9

effective and proportionate way to proceed than for multiple experts to be instructed on the same issue. (*emphasis mine*)

[11] The case law on expert reports establishes that:

- a. The substance of all material instructions should not be incomplete and should not be misleading. The material should include all necessary instructions.
- b. The expert's report should set out the expert's analytical process assumptions and deductions.
- c. The expert should not stray into the role of the decision maker

[12] In the case at bar both parties agree that due to the nature of the proceedings the court would be assisted by the guidance of an expert witness. This expert would be able to assist the court in its consideration of the primary issue in the matter that is, whether the handwriting and the signature of the impugned will is that of the testator.

[13] At the first hearing of the application¹⁶ there was some discussion between the bench and bar subsequently the following directions were given:

- a. That the parties have seven days to agree on a single expert to be appointed.
- b. That in the event the parties did not come to a consensus, they were at liberty to file submissions as to their recommendations, for the court's consideration.

[14] Each party filed their submissions as ordered by the court they each supplemented their written submissions with oral submissions. The respondents also filed an application¹⁷ for the appointment of an expert and recommended their own expert for the court's consideration.

Applicant's submissions

¹⁶ First hearing of the application took place on the 4th February 2026

¹⁷ Respondents' application filed on the 18th February 2026

- [15] It is the applicant's position that the parties have failed to reach an agreed position regarding the appointment to be made and that it is therefore now for the court to either grant the applicant's application or refuse it. Counsel Mr. Hugh Marshall on behalf of the applicant submitted that the challenge to applicant's choice of expert is without merit. Counsel made no specific reference to the respondents' assertion of perceived bias on the part of the applicant's recommended expert.
- [16] Counsel pointed out to the court that the recommendation made by the applicant was done after consultation with the offices of the Director of Public Prosecutions and the ONDCP¹⁸ and that their recommended expert is suitably qualified to be appointed by the court.
- [17] Counsel argued that the application before the court is whether Beverly East should be appointed as a joint expert (of the claimants and the defendant) or an individual expert to assist the court. It is the applicant's contention that this is the sole issue for determination and that in the circumstances of the case at bar the jurisdiction as provided for by Part 32.9 of CPR as contended by the defendants does not arise. Counsel cited and relied on the consolidated Court of Appeal decision in **John O Dyrud -v- Palmavon J Webster & First Anguilla Trust Company Limited**¹⁹ and **Palmavon J Webster -v- John O Webster -v- John O. Dyrud & First Anguilla Trust Company Limited**²⁰ ("Webster -v- Dyrud") particularly at paragraphs 52, 54 and 56 of the judgment of Farara JA.
- [18] The respondents in compliance with the Court's order made their recommendations and included the resumé of their proposed experts.
- [19] The respondents' in their affidavit²¹ in opposition to the application and their oral submissions contend that given the direct conflict of factual evidence which arises in this case, the unilateral selection of the proposed expert Ms Beverly East creates a risk of bias as they

¹⁸ These two offices have used and relied on handwriting experts multiple times in the past.

¹⁹ AXAHCVAP2021/0010

²⁰ AXAHCVAP2021/0011

²¹ Affidavit filed on the 15th January 2026

contend that she may have already been briefed by the applicant on his theory that the impugned will is a forgery.

[20] The defendants also aver that “they have been advised by their counsel and verily believe it to be true that an expert selected solely by one party may be perceived as an advocate for that party’s position rather than an impartial assistant to the Court, ...”²²

[21] The applicant in their affidavit prayed that the court appoints a single joint expert pursuant to Rule 32.9 of CPR. The defendants aver further, that they have been advised by their counsel and verily believe that “a Single Joint Expert” is necessary to ensure an objective analysis of the original Will and to prevent disproportionate costs of “a battle of experts”.²³

[22] The defendants went on to recommend four possible experts for consideration by the court and they duly exhibited the CV’s of their proposed candidates.

[23] In his oral submissions Counsel Errol Cort on behalf of the defendants stated that the **Webster -v- Dyrud** can be distinguished in respect of the case at bar because in that case the Judge considering the application dismissed the application and after dismissing the application went on to appoint an expert which is what the Court of Appeal held was erroneous.

[24] Counsel Cort also submitted that the court as currently constituted engaged both sides on the question of the joint appointment of an expert which was not in his view outside of this court’s discretion and this also makes this case different from the **Webster -v- Dyrud**.

[25] In his response Counsel Hugh Marshall said that if the court were to accept Counsel Cort’s submission regarding his understanding and interpretation of Part 32.9(1)²⁴ that this would mean that the Court of Appeal’s decision in **Webster -v- Dyrud** is incorrect. I do not agree

²² Ibid at paragraph 10

²³ Ibid at paragraph 11

²⁴ Counsel Cort’s submission was that once the court is aware of the desire or wish for the appointment of an expert then there is no need for an application

with Counsel in this regard as it is this court's view that the ruling on Part 32.9 in that case was (as was stated before) there was no application before the court when the judge made his order as the judge previously dismissed the application.

Discussion

- [26] The defendants in the case at bar agree that an expert witness should be appointed however, their objection is directed at who should be appointed. They have made counter recommendations for the court's consideration for appointment, and they submit that in the circumstances of this case, should the court appoint one of the persons recommended by them, the court would not be making an appointment in a vacuum, but the court would be making an appointment pursuant to part 32.9(1). It is in the interest of justice and in pursuit of the overriding objective of CPR that consideration be given to both the claimant and the defendant's positions.
- [27] As stated earlier in my ruling, an expert witness is required to assist the court on matters within their expertise. This duty overrides any obligation or perceived duty to the person who has instructed the witness or who pays the witness. It is trite law that the role of the expert witness is to assist the court with information about the specialist area which is necessary for making the decision at hand.
- [28] In the **Webster -v- Dyrud** case cited by the applicant it was held *inter alia* that:
"CPR 32.2 sets out the overarching duty and general parameters within which a court may, in its discretion, permit expert evidence to be deployed in civil proceeding by the restricting expert evidence to that which is reasonably required to resolve the proceedings justly"
A judge determining whether to admit expert evidence must have regard to the Overriding Objective, that is to deal justly with the case which includes saving expense. ... CPR 32.9 is unambiguous in its terms. It empowers the court or case management judge, when faced with two or more parties wishing to submit expert evidence on a particular issue, to exercise its undoubted jurisdiction to control, restrict and to approve of the type and scope of the expert evidence necessary to reasonable required to assist the court in its determination of that issue, and to direct that expert evidence by given by only one expert. It does not

empower a judge or the court to make such an order absent an application by two or more parties referred to as the “instructing parties”. ...”²⁵

[29] It is the expert’s skill knowledge and experience which is to be used to assist the court. The opinions expressed by the witness is to be the opinion of the witness which has been formed independently. An expert’s opinion should not include views of the client or person seeking to have him or her give evidence as a witness. An expert witness is expected to provide independent assistance to the court and is required to be objective and to give an unbiased opinion on matter related to his or her expertise. **Re: Polivitte Ltd -v- Commercial Union Assurance Co. PLC²⁶.**

[30] This court does not accept as *a priori*, the assumption that because the expert is being recommended by the applicant it means that they have briefed the expert on their case and that there is therefore a suggestion of bias. The question to be considered is whether the proposed expert witness will or would be to comply with the obligations of an independent expert witness and how soundly based are her views.

[31] Is there any evidence before the court in this application to suggest or show that the proposed expert’s independence or ability to fulfil her duty to the court has been or will be compromised? We must always bear in mind that the expert’s evidence is for the court’s assistance rather than the instructing party. The expert has an overriding obligation to the court which is to assist in resolving the issues at hand. It is noted that the expert witness is not a “hired gun” or “an advocate on behalf of either party”. The expert’s duty at all times is to give impartial evidence on matters related to his or her area of expertise.

[32] It is noted that there is always the need to maintain the transparency of the process in appointing the expert and to maintain the independence of the expert.

²⁵ Webster -v- Dyrud Op Cit at Held #2 at page 6

²⁶ [1987] 1 Lloyd’s Report 379 @ p386

[33] In the case at bar, the respondents have raised the issue of perceived, possibility of potential bias or (apparent bias). It is noted that this is not a substantiated allegation. No evidence has been adduced to support their statement.

[34] It is noted that the Court has a general duty to limit expert evidence in any matter before it to that which is reasonably essential to determine the issues under consideration.

[35] Pursuant to part 32. 9 of CPR a judge has the power and discretion to decide whether it is appropriate in all circumstances of a matter to appoint one or more expert witnesses²⁷.

[36] The law relating to the appointment of an expert witness is set out in Part 32.6(3). The court cannot of its own volition call an expert witness at the trial of a case or put into evidence the report of an expert witness. Farrara JA (Ag) in the **Webster -v- Dyrud** said

“...part 32.2 sets out the overarching duty and general parameters within which the court may in its discretion permit the expert evidence to be deployed ... This provision does not empower a judge or the court permission to appoint one or more experts on its own initiative or in the absence of an application by one of the parties to do so, likewise ... does not empower a judge or the court to make such an order absent an application by one or more parties. The powers granted to the court under CPR 32.9 are to be applied by a judge in circumstances where there are applications from two or more parties to adduce expert evidence where those circumstances exist, the judge has the undoubted power and discretion to decide whether to direct, ... that the expert evidence be given by only one expert or whether more appropriately, by separate experts engaged by each of the parties. ...”

[37] In the case at bar there are two written applications for the appointment of an expert witness. This court notes also that in their affidavit opposing the application the defendant clearly averred that they agreed with the appointment of an expert witness however they were objecting to the individual that was suggested. To this court mind this sets the case at bar apart from the situation in **Webster -v- Dyrud** as in that case the judge dismissed the

²⁷ See paragraph 9 above

application for the appointment of an expert. Therefore, when the judge ordered the appointment of the expert witness he was acting on his own initiative with no application before him, which was erroneous. This court therefore disagrees with Counsel Mr Hugh Marshall that Part 32.9(1) cannot be deployed as his application is his live application, the wishes of the defendants are to be clearly discerned from their affidavit and then, there is a second application for the court's consideration filed by the defendants.

- [38] An expert's evidence is opinion evidence. In choosing an expert witness the court must determine whether the proposed expert witness possesses sufficient knowledge or expertise to qualify as an expert. In doing so the court ought to consider the qualifications, expertise with consideration to the field relevant to the issues in the case before the court.
- [39] The defendants in this case have suggested bias on the part of the candidate identified by the applicant. Bias and predetermination can possibly be an issue where an expert is instructed by a single party in a matter. Bias can occur where the expert approaches the preparation of his or her opinion or report with a closed mind. Where the expert has a personal interest in the outcome of the matter, they will be guilty of actual bias and where there is no personal interest, but the conduct and contents of the report lend to the suspicion that the expert was not impartial.
- [40] Lord Hope of Craighead's test as set out in **Porter -v- Magill**²⁸ can be adopted in considering whether the expert's report was biased. That is, the question to be asked is whether the "fair minded and informed observer, having considered the facts would conclude that the" expert was biased. That in this court's view would be a conclusion to draw after the expert has either presented his report or given evidence, certainly not at this stage. Put another way the test has been stated as whether having regard to all the circumstances a fair-minded observer would conclude that there was a real possibility that the "expert" was biased. The court would be required to consider all the circumstances as they appear from the material before it, not just the facts as known to the objectors.

²⁸ [2001] UKHL 67, [2002] AC 357

- [41] An allegation of bias is a serious allegation and as such there should be a clear and cogent basis to make it out. In **Fawcett et al -v- TUI UK Limited**²⁹ the learned judge in considering what he termed as an allegation amounting to one of bias said that “*There must be a clear and cogent basis to make it out because it impugns the professionalism of the witness.*”³⁰
- [42] Ideally, the parties in this case should have agreed on who should have been appointed as an expert witness. It is trite that the intent of the overriding objective of the CPR is to enable the court to deal with cases justly and at a proportionate cost as far as practicable. The courts are also required to ensure that the parties are on an equal footing. The spirit of the CPR is that parties in litigation are expected to assist the court in furthering the overriding objective which includes co-operating with each other in the conduct of proceedings. This could have been done by the parties. It is noted in Counsel Mr Marshall’s submissions³¹ he stated at paragraph 2 that “*The Applicant upon the direction of the Court given in its order of 4th February 2026 has sought to agree the appointment of an expert with the Defendants. This the Applicant has done by reaching out to the DPP’s Office and the ONDCP (who use experts) however, the Applicant is unable to agree to any of the Defendant’s nominated experts. ...*” This court understands Mr Marshall to be saying that the applicant reached out not to the defendants but to the office of the DPP and ONDCP in compliance with the court’s order. This certainly suggests that there was no real attempt at discussing the matter and co-operating with each other as is required by CPR.
- [43] In the face of the position taken by the parties this court is prepared to grant the application for the appointment of the expert. It is unnecessary to overcomplicate the issue to be decided on. Both parties agree that an expert should be appointed to address the central issue in the case that is if the handwriting and the signature on the impugned will. There is the need to control and restrict the number of experts and to keep the costs proportionate to the matters in issue’

²⁹ [2023] EWHC 400 KB

³⁰ Ibid at paragraph 33

³¹ Submissions filed on the 17th February 2026

- [44] This court will therefore deploy part 32.9 (1) to (3) which states
- “(1) If two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.
- (2) The parties referred to in paragraph (1) are known as “the instructing parties”.
- (3) If the instructing parties cannot agree who should be the expert witness, the court may – select the expert witness from a list prepared or identified by the instructing parties; ...”
- [45] It is therefore directed that evidence shall be given by a single witness. A single joint expert witness. Each party shall give instructions to the witness and pursuant to part 32.11(5) the parties shall be jointly and severally liable to pay the fees and expenses associated with the expert’s testimony.
- [46] The final issue to be determined is which of the persons nominated should be appointed. This court now must select an expert from among the names presented by both sides. I have reviewed the CV’s of all four proposed independent experts whilst having regard to the issues that the court requires expert evidence.
- [47] The case of **Gheewalla -v- Rasul**³² where the court was called on to determine who would be appointed an expert witness in default of an agreement between the parties, has provided this court with a relevant example as to how a court can go about considering which person from the list put forward by parties can take on the role of the expert witness to guide the court in its decision. In this case the court considered *inter alia* the candidate’s background, and the relevant experience in the precise area of expertise required.
- [48] Essentially what the court is looking at in this case is evidence of a handwriting expert who can speak to the authenticity of signature and the writing on the purported will of Asot Michael deceased. Having reviewed the CV’s of all the proposed candidates they all appear to be well qualified for the task at hand.

³² [2023] EWHC 2074 (Ch) (09 August 2023)

[49] Accordingly, I will grant the order to appoint an expert witness in this case. This court will also order the parties to appoint a single joint expert in these proceedings and in view of court's authority to regulate the expert's fees and expenses³³ and the Overriding objectives of CPR , this court before deciding on the best suited expert from the candidates listed by the parties requires the following additional information and directs the parties to obtain the following information and submit same to the court within 14 days of today's date:

- a. The recommended experts willingness to accept an appointment as an expert witness;
- b. The estimated time for the proposed candidate to prepare the report;
- c. The estimated cost of providing the report; and
- d. The proposed experts possible availability to give evidence including dates and time to avoid and the notice period required for them to either attend or provide evidence via video link given that the trial in this matter is likely to take place in the Michaelmas term of 2026.

[50] This matter is adjourned to the 20th May 2026 for consideration of the appointment of the single joint expert. This court continues to encourage counsel to possibly agree on the appointment of that expert.

M E Birnie Stephenson
High Court Judge (Ag)

BY THE COURT

REGISTRAR

³³ Re: Part 32.11.(4)(a) of CPR