

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2021/0421

In the Estate of Terrence Lesroy Theophilus Carter, late of Sir George Walter Highway, in the Parish of St. John, in the State of Antigua and Barbuda, deceased

BETWEEN:

CLARA EDWINA JARVIS-CARTER

Claimant

and

AROUGOO NEVILLE ADAMS

Defendant

Appearances:

Mr Leslie Thomas KC with him Ms Michelle Sterling for the Claimants
Ms Joanne Massiah for the Defendant

2024: April 10th

April 11th

June 25th

Judgment

- [1] **BYER, J.:** This is a probate matter which arises from the defendant, both the principal beneficiary and sole executor of the estate of Terrence Lesroy Theophilus Carter ("the Deceased"), applying for probate of the Last Will and Testament of the Deceased at the Probate Registry on 16th August 2021. On 24th August 2021, the claimant filed a caveat to protect her interest, contending that the deceased neither knew nor approved of the contents of the will at the time of its execution and that the will was not duly executed in accordance with the Wills Act¹.

¹¹ Cap 475.

- [2] Thereafter, the claimant initiated proceedings against the defendant in this matter by way of a Fixed Date Claim Form and amended Statement of Claim filed on 16th March 2022, wherein the claimant claimed:
- (1) That the court shall pronounce against the validity of the said alleged will dated December 30, 2015.
 - (2) Discontinuation of the Defendant's application for probate filed in the probate registry;
 - (3) A grant to the claimant of Letters of Administration of the estate of the deceased;
 - (4) Interest on any sum found due by the court to the claimant pursuant to the Eastern Caribbean Supreme Court Act, Cap 143.
 - (5) Costs.

Background

- [3] At the heart of this legal dispute are two key figures: the claimant, Ms Clara Edwina Jarvis-Carter, the estranged wife and rightful widow of the Deceased, and the defendant, the Deceased's half-brother and sole executor of his estate, who stands to inherit the majority of the assets under the contested will.
- [4] The Deceased, during his lifetime, was a prominent businessman with diverse holdings, including a car rental business, a restaurant, a guest house and various rental properties scattered across Antigua and Barbuda.
- [5] The Deceased and the claimant were married on 10th July 1986 and their marriage resulted in the birth of one child, Aury Carter. Prior to their marriage, the Deceased had already fathered five (5) children with other women. In total, the Deceased had six (6) children, three of whom have joined the claim with the claimant.
- [6] In or around 1995, the marriage broke down irretrievably, which as this court understands it, was partly due to the Deceased having extra-marital affairs and in particular with one of the beneficiaries of the will, Maxine Vigilant. At the time of the breakdown of the marriage, the Deceased was completing construction of his guest house.
- [7] By mid-2005, the Deceased had moved out of the matrimonial home owing to differences between the parties and an admission that he cheated on the claimant with the said Ms Maxine Vigilant. From that time until his passing, the Deceased and the claimant lived separate and apart.

[8] Following his departure from the marriage, the Deceased began cohabiting with Ms. Vigilant. They relocated to the aforementioned guest house, where they lived together as partners until his demise. It is understood that they also operated a business together for 15 years preceding his death.

[9] The Deceased died allegedly testate on 19th April 2021. The gravamen of the dispute between the parties, therefore, surrounds the creation of two testamentary documents: a will created in 2015 and a subsequent will in 2016 purportedly made by the Deceased where in both documents, the Deceased devised the majority of his property to the defendant with the only difference between the two documents being the inclusion of an additional clause in the 2016 document to benefit one Cortwright Vigilant Jr, the son of the said Maxine Vigilant. The contents of the 2015 will provided as follows:

I, **LESROY T.T. CARTER**, of Airport Road, in the Parish of Saint in the Island of Antigua, hereby **REVOKE** all former **WILLS** and Testamentary Disposition made by me and declare this to be my **LAST WILL**.

1. I appoint my brother NEVILLE ADAMS, to be the sole Executor and Trustee of this my WILL.
2. I direct my brother NEVILLE ADAMS together with my friend MAXINE VIGILANT to pay all my just debts, funeral and testamentary expenses.
3. I give devise and bequeath my property where my wife, EDWINA CARTER, currently resides at Jonas Road and all its contents unto my said wife for her life and thereafter unto my daughter AURY CARTER absolutely.
4. I give devise and bequeath all my other real and personal properties and all my businesses unto my brother NEVILLE ADAMS and my friend MAXINE VIGILANT to be theirs absolutely.
5. I give and bequeath all money on my bank accounts at First Caribbean International Bank (US\$ Account #100077826 and EC\$ Account # 45967767) unto my said brother NEVILLE ADAMS to be his absolutely.

[10] While the 2016 will was in the very same terms save and except for the inclusion of paragraph 4 which stated as follows:

“[4] I give devise and bequeath my property situated at Cassada Gardens in the parish of Saint George unto my close friend CORTWRIGHT VIGILANT JR to be his absolutely”

- [11] Both wills concluded with the customary attestation clause, indicating that the execution by the Deceased was purportedly conducted in the presence of two witnesses who witnessed the Deceased's signing. However, it was clear that in the 2016 will, it is shown that the Deceased purportedly signed the same on 30th December 2015,² while the attesting witnesses purportedly signed on 31st August 31 2016.
- [12] The claimant challenged the creation of both testamentary documents for several reasons. Firstly, that the signatures on both documents were not the signatures of the Deceased. In that regard, the claimant relied on the expert opinion and findings of Dr. Beverly East. Secondly, the claimant asserted further that the Deceased, was known for using the name **Terrence Lesroy Theophilus Carter** on formal documents, and was not known or would not have employed the name **Lesroy T.T. Carter** as indicated on the testamentary instruments. Thirdly, the Deceased would have provided for his children, particularly his grandchildren with whom he enjoyed a good relationship.
- [13] The defendant refuted the claimant's allegations and contended that the documents were authentic, bearing the genuine signature of the Deceased. It was asserted that the Deceased duly instructed his will to be drawn up and finalised, then entrusted the said documents to the defendant in a sealed envelope, instructing him not to open it until after his demise. The defendant asserted that he did comply with these instructions and did not open the said envelope until after his brother's passing and that the documents presented to the lawyer were the very same documents with which he was entrusted.
- [14] There were several witnesses in this matter, five (5) witnesses for the claimant, namely: Minuska Carter, Peter Samuel, Clara Jarvis-Carter, Doyle Carter, and Aury Carter-George and four (4) witnesses for the defendant, Barrimore Gore, Arougoo Neville Adams, Linda Roberts, and Joanne Smith. There was also the evidence of the sole expert witness Dr. Beverly East.

THE EVIDENCE

Ms. Minuska Carter

- [15] This witness, the daughter of the Deceased, testified that she and her twin children shared a strong bond with their grandfather, communicating with him daily. In her examination in chief, this witness painted the picture of the Deceased being a doting grandfather who supported the children

² Which was in fact the date attached to the 2015 will

financially. As such her evidence was that he would never have made a will that made no provision for her children and as such supported her stepmother's claim that the said wills were in fact fraudulent.

[16] During cross-examination, when questioned about her father's contribution towards her development, this witness readily admitted that after she and the claimant had had a falling out in 2009, she lived with the Deceased and Ms Vigilant in an apartment that the Deceased had provided for her in which she lived rent free did not pay any utilities while Ms Vigilant occasionally provided meals. This witness also divulged to the court that during his lifetime the Deceased had also transferred a parcel of land to the two of them³.

[17] When this witness was pressed as to why she left the apartment and the business in 2016, she admitted that she and the Deceased had had a falling out when he returned from a trip overseas for medical treatment in 2014. Although she attempted to aver that she did not know the reason for the falling out she did eventually admit that it was over the fact that she had gotten pregnant and how she had managed the business while he was away. It was also clear from this witness that her father was headstrong and rough sometimes and that when she resigned from the business in 2016 it was because she was tired of the treatment she received from him and the things he would say to her. She admitted that she knew that her father wanted his children to work with him to build the business. She also admitted that when she left in 2016 she would see her father sporadically but would call him regularly until his death in 2021. However, she maintained that her father had always mentioned his plans for her children in case anything happened to him, including leaving a house and land to them.

[18] She expressed her belief that her children should have a right to their grandfather's estate, as per his promises to them. Although she acknowledged her father's right to change his mind, she had not been aware of the existence of a will. Additionally, she noted that she had only seen her Uncle Neville (the defendant) sporadically, making it also unusual in her mind that her father would leave his estate to him.

Mr. Peter Samuel

[19] Mr. Samuel is a mason who worked intermittently for the deceased from 1987 until his passing. He portrayed the Deceased as a generous man who valued honesty and maintained a close bond with all his five children. Mr. Samuel noted that the deceased referred to Mr Neville as his "last brother"

³ A document to substantiate this was not disclosed by either party

but he had never witnessed Mr Neville engage in any business-related activities aside from attending parties hosted by the Deceased.

- [20] During cross-examination, although the witness affirmed his close relationship with the Deceased and his familiarity with the deceased's wishes regarding both his business and family, it was clear that although the Deceased may not have discussed business issues with him directly, he consistently expressed his aspiration for his children to collaborate in expanding the business. However, due to his irregular presence, the witness lacked comprehensive insight into the daily operations of the business and was uncertain about the defendant's regularity. Although family members such as Ms Aury Carter-George, Mr Arougoo Neville Adams, Ms Doyle, and Ms Nakeda Carter were involved in the business, the witness's sporadic attendance prevented him from delineating their specific roles or the defendant's level of involvement.

Mrs Clara Jarvis-Carter (the claimant)

- [21] The Claimant testified that despite her separation from the deceased in 2005, they maintained a close and supportive relationship. She continued to manage some rental properties which she was told by the deceased to use and provide for herself and the children and up to the date of his death this witness always considered the Deceased as her husband and insisted that the connection was maintained even with their differences.
- [22] The claimant recounted that after the death of her husband, she was called to attend at the office of Ms. Sylvia O'Marde in the presence of Mrs Carter-George and the defendant. She relayed to the court that Ms O'Marde clarified that she was not the attorney who prepared the will and expressed unfamiliarity with the Deceased but that the same had been brought to her to probate by the Defendant. After hearing the will read, the claimant became suspicious of its authenticity, particularly when she discovered that property inherited from her mother had in fact been willed to her by the Deceased. She also questioned the inheritance of the Deceased's business, bank account, and other properties by the defendant, as he had not been close to the Deceased or assisted him in building his properties, despite being an electrician.
- [23] Expressing disbelief in the will's contents, the claimant stated that the deceased had a deep love for his children and grandchildren and would have provided for them under his will. She highlighted the Deceased's request for Mrs Carter-George to leave her teaching job to work with him, emphasizing his commitment to his family building the business together. Noticing discrepancies in the will, such as varied dates and an incorrect name for the deceased, she cast doubt on its authenticity.

- [24] On cross-examination, it was clear that the claimant and the Deceased, rather than having a connection as she sought to portray in examination in chief, had minimal interaction post- their separation. She however stated that all the children had a loving relationship with the Deceased although they all complained that he treated and spoke to them rough which was how he operated once Ms Vigilant came into his life.
- [25] The claimant also maintained that although she did not visit the Deceased and had little contact with him even when he got ill, she would talk to him on the phone but it was never about his business affairs or finances. When she made a point to state her concern about the will, besides leaving nothing for her and his children, which she found was more than passing strange, she also indicated a great concern for the fact in how he signed his name on the will. She was adamant that he would never have signed his name as **Lesroy TT Carter** as stated on the will as she always knew that he signed legal documents as **Terrence Lesroy Theophilus Carter**. However, when she was presented with a deed poll dated 9th May 2008 where the Deceased had changed his name to Lesroy TT Carter she admitted that she had not been aware of the same, but maintained that it did not change her view that the wills were questionable.
- [26] Despite the rigorous cross-examination, the claimant maintained her assertion that the wills were fraudulent and that rather than acting out of motive for greed, there should be a fair distribution benefiting her as the wife of the Deceased and his children. She highlighted the joint efforts of her and the Deceased building the family business from scratch and the Deceased's desire for all his children to be involved. She maintained that the fruits of the labour of the Deceased and herself should therefore be shared with those persons he supported and loved.

Doyle Carter

- [27] Mr Doyle Carter, the decedent's son, testified that he believed the wills presented by the defendant did not accurately reflect his father's wishes. He stated that he was not aware of a close relationship between his father and the defendant and did not recall any significant interaction between them. Mr. Carter expressed disbelief that his father would exclude his children or grandchildren from his will, given his active involvement in their lives. However, he acknowledged his father's right to determine the distribution of his estate.
- [28] During cross-examination, Mr. Carter revealed that he worked in the family business for approximately two years and managed various aspects of it, including the rental and taxi businesses. He mentioned that he stopped working in the family business due to occasional differences of opinion with his father who he described as strong-willed and ambitious. However, this witness when pressed

on cross-examination admitted to having limited knowledge about his father's business operations or the nature of his relationship with the defendant after he left the business and, in fact, he admitted that he would not have known if that relationship had developed in the last 18 to 20 years. He however maintained his scepticism about the authenticity of the wills and he maintained his belief that the wills were fraudulent and asserted his right to a share in his father's estate as his son who bore his last name.

Aury Carter-George

- [29] She is the daughter of the deceased, who along with her siblings, including his stepson, worked at the family business located at the VC Bird Airport when it was first established. In examination in chief, she made it clear that after having completed her university education and even while at university she worked at the family business on weekends and after her teaching job in the afternoons. Mrs Carter-George testified that her father supported all members of the family and had a particular fondness for his grandchildren. In 2019, when the deceased fell ill, this witness was who brought him to the doctor at which time he then had a discussion with her about managing his business full-time.
- [30] Mrs Carter-George stated that she agreed to her father's decision and consequently, she resigned from her position as head of the Business Department at All Saints Secondary School in May 2020 to work full-time at her father's business. She began to rebrand the business, but due to the COVID-19 pandemic, the business operations came to a halt.
- [31] She further stated that on the day of her father's passing, she observed that her uncle, the defendant, was at her father's house and he appeared to be busy and preoccupied with activities but failed to communicate with her or her siblings. It was therefore not until 18th June 2021, that her uncle informed her about the reading of her father's will. Similar to her mother's testimony regarding Ms O'Marde, Mrs Carter-George expressed her surprise at her father leaving the majority of his estate to her uncle, excluding his children, herself included, and his grandchildren.
- [32] She voiced her suspicion regarding the differing dates on the presented will. She also mentioned her expectation of a later will, as her father had indicated in 2018 that he had it in his car, although she had refused to see it at the time. She emphasized that as far as she was aware there were no close bonds between her uncle and her father, and she found it unusual that her father's legal name as she knew it, had not been placed on the will and as such she believed that the wills were not authentic and that the defendant is not the rightful beneficiary of her father's estate.

- [33] During rigorous and at times emotional cross-examination, this witness provided insight into her relationship with the deceased and her involvement in his business and personal affairs. She told the court that she and the Deceased were close to the point that he assisted her with technical advice and sourcing workers for her when she built her home with her husband but that he did not help her financially.
- [34] Although she had stated in examination in chief that she had worked with her father part-time upon her return after university, it was not until this cross-examination that she admitted that this only lasted until 2011 when she stopped working there at all. She told the court that she came to that decision partly due to her being tired of working two jobs and because she had had a falling out with her father. However between 2011 and 2020 when she returned to work for him, her contact with her father was regular and frequent to the point that it was her that took him to the doctor in 2019 when he started to feel unwell.
- [35] This witness therefore acknowledged her father's hard work and the sacrifices he made in building the business and was intimately aware of how the business ran. She told the court that her older brother, her sisters Ms Nakeda Carter and Ms Minuska Carter worked with her father as did Ms Vigilant and in fact, her sister Ms Nakeda Carter worked with their father up until his death. This witness stated that she did not feel she was entitled to the estate of her father and acknowledged that the Deceased could dispose of it as he wished. However, after the deceased's death, she felt that the behaviour of the defendant who abruptly took over the business, locking the house and taking the key, and having little to do with her and her siblings all raised suspicions.

Defendant's witnesses

Arougoo Neville Adams

- [36] He is the defendant and the brother of the Deceased as well as the sole appointed executor in both wills. The witness stated that he shared a close bond with the deceased since childhood and they often discussed ideas as businessmen. He frequently visited his brother at both his business and residence, where he resided with his life partner, Ms Vigilante.
- [37] In examination in chief, this witness purported to describe the relationship dynamics between his brother, his estranged wife, and Ms Vigilante. He asserted that his brother and his estranged wife led separate lives for approximately 17 years, while he enjoyed a close and enduring relationship with Ms Vigilante for about 16 years, during which they both contributed significantly to the family business.

- [38] He stated that in 2015, he received a call from the Deceased asking him to visit him to discuss personal matters, and general conversations about life, family and business. The Deceased then went into his bedroom and came back with a sealed envelope which he handed to him, he wasn't told what was in the envelope but was instructed not to discuss his request with anyone and to keep it in a safe and secure place and to open it only after his death. The witness stated that he honoured this request, concealing the envelope in a safe at his home, accessible only to him.
- [39] After his brother's passing, he took the envelope from the safe, opened it, and realised that it contained his brother's will. The witness stated that having read the will he realised that he was the sole executor, and he and the Deceased's life partner were the major beneficiaries. Realizing he was named as the sole executor and a major beneficiary, he sought legal counsel from Ms Sylvia O'Marde to apply for a Grant of Probate. The witness stated that he recalled executing an Oath of Executor on 27th July 2021. However, he later learned that the wrong will was inadvertently uploaded to the portal as his brother, the deceased, initially executed a will dated December 30th 2015 and then executed one dated August 31st 2016.
- [40] Under rigorous cross-examination, the witness sought to clarify his evidence as to the production of the wills. He told the court that when he opened the envelope (the timing of which was also quite unclear) he discovered two envelopes within the original one and later realized it contained two different wills. He stated that he briefly glanced at the wills on the day of his brother's death but didn't read them thoroughly until later when he was at home. Believing one will was more recent, he brought both wills to his lawyer, but only one was presented to the attorney, which he assumed was the correct one. He stated that he omitted this information from his witness statement due to an oversight on his part however he was now telling the court that not only were there two wills that he got from his brother but that further that the attorney received both wills. He affirmed that he trusted the correctness of the will presented to his attorney and agreed that he had, in fact, signed the 2015 will as the will to be probated relying on his legal counsel to have done the correct thing. He assured the court that he knew the importance of stating all the information that he could with regard to the province of the wills and not having said so before was due to inadvertence and "a lot of things on his mind". He however categorically denied any involvement in fraudulent activities related to the wills.

Barrimore Gore

- [41] The witness stated that as the Operations Officer at CGH Business Service Ltd, he worked directly with Mr Nigel Henry, Commissioner of Oaths, and Ms Joanne Smith, a contracted attorney. His

responsibilities included providing commercial transaction services, estate planning, and general business advice, which also involves preparing testamentary documents for clients and probating wills.

- [42] He stated further that in his role, he frequently witnesses documents prepared by his office. He was acquainted with the Deceased as one of his business clients to whom he provided business services and advice. Mr. Gore recalled that on 31st August 2016, the decedent visited his office to execute his Last Will and Testament. He mentioned that he was asked to be one of the attesting witnesses to the will, which was read to the Deceased in his presence. Subsequently, in the presence of Ms Linda Roberts (formerly Linda Emmanuel) and himself, the Deceased signed the will. They both counter-signed as attesting witnesses and dated as having done so on 31st August 2016.
- [43] Mr. Gore stated that he discovered a clerical error after the will was challenged in court. Upon review, he realized that although the will was duly executed on August 31, 2016, the body of the document erroneously bore the date of December 30, 2015. However, the will was indeed executed on August 31, 2016, as per the correct date on the signature page.
- [44] During cross-examination, Mr. Gore acknowledged the absence of hard evidence such as receipts evidencing payment for services by the Deceased, stating that only copies were available in the office. He clarified that the signing occurred at the office counter, and Ms. Roberts read the part of the will that the Deceased had instructed he wished to change. Although this detail was missing from his initial statement, Mr. Gore emphasized that the signature on the will was genuine, based on his personal observation. He confirmed that he knew the Deceased from previous visits to the office and was certain that the person who signed the will was indeed the Deceased.

Linda Roberts

- [45] She was formerly known as Linda Emanuel and served as the administrative assistant at CGH Business Service Ltd for the past nine years. She became acquainted with the Deceased over seven (7) years of interaction, during which she became familiar with his handwriting and signature through various document signings.
- [46] Recalling a specific day in 2015, she detailed the Deceased's instruction to prepare his Last Will and Testament, which she typed as per his instructions given to her principal Ms. Joanne Smith. The will was read and executed on 30th December 2015, in the presence of Ms Smith and herself, with both countersigning as the attesting witnesses.
- [47] She stated further in examination in chief that in mid-2016, the Deceased returned to the office seeking to amend his will, and instructed Ms Smith to make the necessary changes. The witness

stated she typed the new will, incorporating the revisions to include a bequest to Mr. Cortwright Vigilant Jr. On 31st August 2016, the deceased returned to execute the new will which was read over to him and he being satisfied that it reflected his revised wishes, duly executed the same in the presence of herself and Mr Barrimore Gore who counter-signed on this occasion as attesting witnesses and dated the said will as 31st August 2016. She recalls placing the executed will in an envelope and handing it to the Deceased.

- [48] Additionally, in late 2018, she facilitated the sale of a parcel of land to Cortwright Vigilant, processing the required instrument of transfer after contacting both parties for signatures.
- [49] Following the Deceased's death, she stated that she was contacted by Mr Adams, who was the sole executor of the will and she was advised that he had retained Ms O'Marde to apply for the Grant of Probate. She stated then she had the opportunity to examine both wills which were duly executed at her office and recognised that she had made a grave clerical error in the varied dates on the last will.
- [50] She explained she copied the old will in its entirety as a new file and, added the new paragraph per her instructions by her principal who was instructed by the Deceased but through inadvertence failed to change the date of the subsequent will to 31st August 2016. She reiterated that the Deceased had duly executed both wills which were countersigned in the presence of two attesting witnesses.
- [51] In cross-examination, the sequence of events as stated in examination in chief, changed somewhat. She readily admitted that she was not a lawyer but that the office she worked for provided services to individuals which included legal services like the preparation of a will. When there is a need for legal advice to be given or instructions to be obtained, the office contracts Ms Joanne Smith, a lawyer, who provides those services, like the supervision of the preparation of a will.
- [52] She acknowledged that the office did not provide any record to the court of the Deceased having made an appointment or having paid for the services rendered to him, however, she maintains that the will was read out loud to the Deceased, ensuring he agreed to what was contained and to spot any potential mistakes. She told the court further that she recalled the Deceased coming to the office and asking to amend his will, however in direct contrast as to what she said in examination in chief, he did not give those instructions to Ms Smith but rather to her who then sought confirmation from Ms Smith if to proceed with the changes.
- [53] At the conclusion of her evidence, the witness reiterated that the amendments to the will were made at the Deceased's request, and he was familiar with the changes but that the error regarding the date was unintentional, and she did not lie to the court.

Joanne Smith

- [54] She stated in examination in chief that she has been an attorney for twenty (20) years and is employed as an in-house counsel at the Social Security Scheme, a statutory corporation in Antigua and Barbuda and also provides legal consultancy services to persons. She is familiar with CGH Business and its staff members and has worked with Mr Linda Roberts and Mr Barrimore Gore in the course of offering legal consultancy services.
- [55] She recounted consulting with the Deceased in December 2015 and receiving instructions from him to prepare his will. Thereafter she prepared a draft of the said will and gave it to Ms Roberts to prepare on her computer. The witness stated that having reviewed the will with the Deceased to ensure his instructions were duly reflected therein, the deceased being satisfied, she and Ms Roberts witnessed the Deceased sign the said will and thereafter, they countersigned same in his and each other's presence. She stated that she and Ms Roberts dated the will 20/12/15 per the usual customary estate planning protocols. The Deceased was then handed the executed will.
- [56] Her next personal encounter with the Deceased was when he returned in 2018 when she witnessed an instrument of transfer from the Deceased to Mr Cortwright Vigilant for the sale of the parcel of land.
- [57] On cross-examination, this witness was particularly defensive in giving her answers to counsel for the claimant but she did say to him that she did recall that she received instructions from the Deceased as to the contents of his will and that she had read them back to him when the will was prepared. She however admitted that that had been her first time dealing with the Deceased.
- [58] After the execution of the will, she stated that she had no further dealings with the Deceased until November 2018 when she witnessed a land transfer document. She stated that she later learned that he had come in and changed an aspect of the will, but she was only concerned with the will she had witnessed.
- [59] However in relation to that later will, she stated categorically that she was not instructed by the Deceased to make any changes to the will she witnessed but she did recall at trial that Ms Roberts may have indicated to her that the Deceased wanted to make changes which she acknowledged. This witness made it clear that she did not personally ask for any form of identification from the Deceased as she was aware that the protocol in the office when a client attended was to obtain such verification.

THE EXPERT'S EVIDENCE

Ms. Beverly East

- [60] This expert was engaged by the claimant to determine the authenticity of the signatures on the 2015 and 2016 will. As it relates to the first will, the expert observed and compared the following documents:
- (1) Will dated 30.12.2015.
 - (2) Receipts with undisputed signatures of the Deceased from 2011-2016. Those closer to the date of the questioned document were used for comparison.
 - (3) Receipt from Carter's Rent-A-Car signed by the Deceased on 12.12.2016.
 - (4) The transfer of land was signed and dated 7th November 2018 containing three signatures.
 - (5) The marriage License of Aury Joyce Carter and Darell Delroy George dated August 11, 2019, witnessed by the signature of the Deceased.
- [61] Having conducted a thorough examination of the 2015 will and included all her findings and methods in her report, the witness stated conclusively that the 2015 will bore all the characteristics of "a simulated signature". In coming to her conclusion she also stated that it was clear to her that the writer of the questioned signature was of a higher skill level than the Deceased with most of the letters in the signature being clearly formed, were too precise on the baseline and there was evidence of poor line quality evident in the questioned signature.
- [62] The witness also examined the 2016 will and compared it to the 2015 will and the known signatures of the Deceased.
- [63] In her report, the expert examining the second document noted the discrepancy between the date of the will and the date attached to the signatures of the witnesses but that in any event in her opinion, the second will "did not bear an authentic signature of the Deceased there being too many inconsistencies to deem the signature genuine". In fact, this witness stated categorically that in the industry of assessing handwriting, all that is required is for one inconsistent characteristic to make the handwriting/signature inauthentic. In the case at bar, this witness said she found four (4) in the 2015 will and six (6) in the 2016 will.
- [64] In coming to her conclusions and drawing on 35 years of experience she considered the movement of the pen, as to how the writer moves across the page or creates the signature, she considered letter formation which takes into account the subtle habitual writing patterns in every formation of the letters, spacing – the subtle behaviour within a signature not clearly identifiable by an untrained eye and finally line quality which is examined under a microscope.

- [65] The expert was subject to intense cross-examination from counsel for the defendant but she maintained throughout that her analysis revealed several inconsistencies in the signatures, indicating that they were not authentic. She pointed out that there were fundamental differences between the signatures in the wills and the known signatures of the Deceased.
- [66] The witness stated that there was a 99% certainty that neither signature was authentic. She emphasized that her examination was not done lightly, and her level of certainty was always very high. She further explained when asked if the examination of originals would have made a difference, that while original documents were preferable, copies are usually sufficient for examination. She stated that she would have been 100% certain if she had been given the original documents. In cross-examination when being taken through an examination of the signatures by counsel told the court that indeed no one signs their name the same exact way every time as handwriting is a brain function that may or may not change with age. She also said that the documents that she used to carry out her comparisons all contained habitual writing patterns which were absent in the wills and that with microscopic examinations that she carried out (but not presented to the court), she was able to see the subtle differences that brought the signatures into dispute. The expert disagreed with the assertion that her reports were rushed and defended the reliability of her findings.
- [67] During questioning from the court, the expert explained various handwriting patterns and inconsistencies she observed, indicating that the signatures on the wills were not consistent with the Deceased's known signatures. She noted that the differences between the signatures were significant, even though the wills were signed only months apart. Finally, she reiterated that her findings would not change, even if there were years between the signatures, as the signatures on the wills were still not consistent with those of the Deceased.

The Claimant's Submissions

- [68] The claimant contended that the burden of proof lies with the defendant to establish the authenticity of the questioned signatures. Counsel stated that even if the burden were to rest with the claimant, it has been satisfactorily discharged through the evidence adduced by their expert witness Ms. Beverly East, a handwriting specialist with over three decades of experience and extensive qualifications, whose findings carry significant credence.
- [69] Counsel highlighted that Ms East's report reveals numerous fundamental differences in the deceased's signature on both the 2015 and 2016 wills, with four inconsistencies in the former and six in the latter. Counsel argued that despite not examining the original will, Ms East was able to

confirm the absence of habitual writing patterns in the questioned signatures and concluded with a 99% certainty that neither signature was authentic.

- [70] Counsel argued that Ms East's analysis therefore unequivocally concludes that the signatures on both wills are fraudulent, and as such her evidence remains uncontroverted. Counsel stated further that with no rebuttal from the respondent in terms of their own expert, Ms East's evidence should therefore be considered to have been implicitly agreed to by the respondent. In those circumstances, Counsel therefore urged the court to accord considerable weight to Ms East's conclusions.
- [71] In assessing the evidence of the defendant, counsel for the Claimant submitted to the court that it needed to consider the implausibility of the narrative that the defendant came into possession of the said wills. Counsel stated that the discrepancies within the Defendant's witness statement, initially indicating the will was provided in early 2015, compared to what he said under cross-examination revealed such major inconsistencies in his testimony that he should not be believed.
- [72] Counsel further argued that the defendant's conduct following his brother's demise raises significant questions about his intentions and character. The defendant's failure to offer condolences to the deceased's daughter, coupled with the abrupt locking of the house to exclude family members, suggests a premeditated claim to the estate. This behaviour, counsel argued, is particularly suspect given the lack of a close relationship between the Defendant and the deceased.
- [73] Counsel argued that the defendant's claim of a clerical error in submitting the wrong will for probate does not absolve the defendant of responsibility to ensure the correct document was submitted. The presence of such an error, particularly as the 2015 will was marked as the Last Will and Testament, raises doubts about the probate process's validity. Additionally, inconsistencies in the defendant's narrative and the failure of Mr Gore, and Ms Roberts to notice the error further undermine the credibility of their explanation and raise doubts about the thoroughness and diligence exercised in verifying the document's authenticity. Counsel stated that the Court must therefore scrutinize the circumstances surrounding the submission of the incorrect will and draw appropriate conclusions regarding its validity and the defendant's culpability.
- [74] Counsel asserted that even in the face of obvious irregularities, there are even more egregious concerns regarding the testator's knowledge and approval of the contents of the will, as well as the authenticity of the signature. Counsel stated further that during their testimonies, Ms Roberts and Mr Gore contradicted their initial statements about whether the will was read to Mr Carter, with Ms Roberts introducing that only paragraph 6 was read to him, conflicting with Mr Gore's evidence that the entire will was read to the Deceased. This, counsel stated, cast serious doubt on the reliability of

their accounts and as to whether the Deceased knew and approved the contents of these alleged wills.

- [75] Counsel argued that the failure of both witnesses to acknowledge the discrepancy in the dates of the will, despite their claims of reading it aloud, raises further suspicion and undermines the credibility of their testimonies. The inconsistencies in their accounts, coupled with the failure to address the glaring error in the document, cast serious doubts on the integrity of the entire process. Consequently, the Court cannot and must not rely on this evidence to make a fair and just decision.

The Defendant's submissions

- [76] Counsel proffered five (5) issues for the court's consideration, namely: (1) whether wills were validly executed; (2) whether the deceased knew and approved of the contents of the will; (3) whether the signature of the deceased was obtained by fraud and was not signed by the deceased; (4) whether the administrative oversight/clerical error by the office of CGH Business Service Ltd., in executing the later will affect the legal validity of the will; (5) whether the court should pronounce against the validity of the will?
- [77] Counsel argued that despite the evolution of the Laws of Wills and Estates, they have remained fairly consistent and as such the law of probate is governed by The Wills Act⁴, The Eastern Caribbean Non-Contentious Probate and Administration of Estates Rules⁵, and the general principles outlined in Tristram and Coote's Probate Practice and Williams on Wills.
- [78] Counsel acknowledged that the person propounding the will must prove its due execution⁶ in accordance with section 7 of the Wills Act. According to section 7, the will must be written and executed in the presence of two witnesses who must attest and subscribe to the will. Counsel therefore submitted that this duty was discharged through the witnesses' statements provided by Ms Joanne Smith, Ms Linda Roberts, and Mr Barrimore Gore. Counsel argued that the viva voce evidence of the foregoing three witnesses is compelling in that they were forthright in their testimony and resolute under cross-examination particularly on the issue of the formalities attendant upon execution of both wills.
- [79] In addressing the evidence of Ms Smith counsel underscored her candour during examination in chief and cross-examination. Counsel also highlighted her good practice of always reading the

⁴ Cap 473

⁵ 2007

⁶ Tristram and Coote's Probate Practice, 30th Ed., page 813 para 34.06

contents of a will to a testator prior to having the client sign the same in order to ensure that the contents of the document duly reflected the instructions given to her. Counsel also underscored evidence from the witness to prove that it could not be mistaken by the witness that the Deceased signed the will as she had conducted business with him on three subsequent interactions involving the transfer of land to Mr Cortwright Vigilant and she had also identified him by his driver's license. Counsel proffered her evidence as one to believe.

- [80] Counsel states further, similarly, Ms Roberts' familiarity with the Deceased must stand as strong evidence as she had conducted several transactions with him over the years and became acquainted with his signature not only these documents which were executed in her presence and to which she bore witness. Counsel proffered her as a witness of truth who remained calm and candid while giving her evidence to this court. Counsel states that equally, Mr Gore was forthright, composed and candid during cross-examination and re-examination.
- [81] Counsel urged this court to give considerable weight to the fact that both Linda Roberts and Barrimore Gore knew the deceased personally as he was a long-standing client of the business and who had often utilized the services of the business for various transactions before and after executing the 2015 and 2016 wills.
- [82] As it concerned the issue of testamentary capacity, counsel contended that the deceased provided instructions for his wills of his own volition absent of any undue influence. Counsel argued that while testamentary capacity was not directly challenged, it was clear that the Deceased was fully aware of the contents of the wills he signed. This assertion, counsel stated, is supported by the testimony of witnesses who were familiar with the deceased. Counsel further argued that soundness of mind is indispensably required in executing a will, and to lend support to her argument counsel cited the authority of *Williams on Wills*⁷ and the case law authority of *Banks v Goodfellow*⁸ to emphasize the requirement of testamentary capacity. According to these authorities, a testator must understand the nature of the act, the extent of their property, and the claims upon them.
- [83] Counsel also cited the authority of *LaTanya Hughes v Clement Hughes*⁹, and argued that there was no evidence to suggest that the Deceased lacked testamentary capacity. Additionally, the simplicity and straightforwardness of the wills are noted, with only one minor change in the 2016 will compared to the 2015 version. Counsel highlighted the testimony of witnesses agreeing to the

⁷ 8th Ed., Vol I, pages 27-38 paras [4.9 and 4.10]

⁸ (1861-73) All ER Rep 47, LR 5QB 237)

⁹ ANUHCv2010/0455 para [57]

Deceased's right to dispose of his assets as he saw fit. Additionally, counsel suggested that any allegation that the Deceased having not provided for his grandchildren or children was evidence of the fraudulent nature of the wills was only indicative of the abject disappointment the Deceased would have felt by his children's lack of involvement in his businesses despite his financial support.

[84] In addressing the signature of the wills, counsel argued that, once the proponent of a will proves to the court that the testator had testamentary capacity when giving instructions and at execution, the burden of proof is met, clearing the way for the will to be declared valid. Counsel argued that this principle has been affirmed in cases such as *Barry v Butlin*¹⁰ and *Cleare & Foster v Cleare*¹¹. However, when the burden of proof is discharged and the claimant alleges fraud, as in the present case, the burden shifts to the party making the allegation¹². Counsel states this was established in *Boyce v Rossborough*¹³.

[85] Counsel argued that the claimant's assertion of fraud based on the discrepancy in the Deceased's name on the wills is unfounded. Despite the claimant's assertion that the Deceased's legal name was not used in the wills, it was shown during the trial that the Deceased by a deed poll dated 9th May 2008 officially changed his name to Lesroy Terrance Theophilus Carter, and thereafter signed his name as such on legal and business documents and transactions.

[86] Counsel enjoined this court to take judicial notice of this name change and that all subsequent legal and business documents were signed in this name. Counsel argued further that the claimant's failure to refute this and her admission that she and the Deceased lived separately for several years, weaken her fraud claim. Additionally, her lack of knowledge of his name change further proved that she was not a factor in the Deceased's life. Consequently, her assertion that the signatures on the wills were not the Deceased's usual signature, as she knew it, as a basis for alleging fraud must fail.

[87] Counsel asserted that the claimant's expectation that the Deceased should have provided for his grandchildren cannot be a basis for alleging fraud. The real motive behind the claimant's allegations and those of the Deceased's children was revealed during cross-examination, where they expressed their belief that they had an inherent right to the deceased's estate. However, this belief does not affect the validity of the disposition made by the will if the testator had the capacity, as affirmed in *Harwood v Baker*¹⁴.

¹⁰ [1838] 1 Moo PCC 481

¹¹ (1869) LR P&D 65

¹² *Tristan and Coote's Probate Practice*, 30th Ed., page 652 para 34.38

¹³ (1857) 6 HL Cas 2 at 45

¹⁴ (1840) 2 Moo PC 282, Erskine J "If he (the testator) had not the capacity required, the propriety of the disposition made by the Wil is a matter of no importance. If he had it, the injustice of the inclusion would not affect the validity of the disposition."

- [88] Counsel stated that it is significant to note that the claimant and her witnesses, three of whom were the Deceased's children, described the Deceased as a strong-willed and determined man who desired for all of his children to work with him in his business. However, due to differences with the Deceased, the children left and disassociated themselves from his affairs. This demonstrates that the Deceased's decisions regarding his estate were made independently of the claimant and her witnesses. In conclusion on this point, counsel asserted that the claimant's allegations of fraud are without merit, as the evidence presented during the trial demonstrated that the Deceased had testamentary capacity and made the wills of his own free will and volition. Therefore, counsel contended that the Defendant has proven the validity of the wills, and no fraud has been demonstrated by the claimant.
- [89] In turning to the reports of the expert witness, counsel contended that there were several inconsistencies in the reports provided by the handwriting specialist Ms Beverly East, dated 8th November 2021 and 15th March 2022, which were relied upon by the claimant to support allegations of fraudulent signatures on the 2015 and 2016 wills. Counsel underscored the inconsistencies as:
- (1) The November 2021 report, despite Ms East asserting most documents, were examined and her opinion would remain the same had she had the original, during cross-examination, she could not confirm whether she received original documents or in what format they were received. This raised concerns as best practice dictates handwriting expert analysis should be conducted using original documents. Receiving documents in other formats or copies requires the said documents to be compressed or expanded thereby skewing the original handwriting unless done at certain specifications.
 - (2) When questioned about variations in the Deceased's signatures on the Instrument of Transfer, Ms East dismissed observations made by Counsel, claiming that only her observations through a microscope were valid. However, she did not provide proof of these observations, raising doubts about the validity of her findings.
 - (3) That Ms East disregarded questions about other factors that could affect signatures, such as mood, health, age, fatigue, and the type of pen used. She also did not specify the type of fraud she believed was used in the documents.
 - (4) In her March 2022 report, Ms East concluded that both wills were witnessed by different individuals, assuming they were executed on the same day. However, this assumption was proven incorrect during cross-examination, suggesting bias in her analysis.

- (5) Ms East characterized the Deceased as a person of "low skill" based on handwriting samples, suggesting he was illiterate. This biased characterization shows elitism and classism.

- [90] Counsel concluded that Ms East's reports should not be given weight due to these inconsistencies, and her defensive stance during cross-examination undermined the credibility of her findings.
- [91] Further to the submissions, counsel contended that the inclusion of a wrong date cannot invalidate the will. To buttress her submissions, counsel cited the authority of **Corbette v Newey**¹⁵ where Waite LJ stated that "*the lack of a date or the inclusion of the wrong date cannot invalidate a will.*" Counsel stated that this principle was reinforced in **Williams on Wills** supra and pursuant to the Wills Act, supra, that what must be demonstrated is that the formalities of due execution were followed. Counsel stated further, that on the matter of clerical errors, it was established by Nicolas, J in **Williams, Wiles v Magdin**¹⁶ that "the court may order rectification of a will where it is evident that the error is that of a typist." Consequently, it was submitted that the administrative/clerical error ought not invalidate the deceased's will and that the 2016 will having been signed subsequent to the 2015 will must stand. .

ISSUE

- [92] To this court's mind, there are therefore two broad issues for determination, with the second issue contingent upon the resolution of the first. These issues are outlined as follows:
- (1) Whether the contested testamentary documents were executed by the Deceased and accurately represent his testamentary intention regarding the distribution of his property.
 - (2) If the answer to that question is yes, then it must be considered, whether the presence of two different dates in the 2016 will invalidates its execution in accordance with the requirements of section 7 of the Wills Act Cap 473

LAW AND ANALYSIS

¹⁵ [1996] 2 All ER 914

¹⁶ [1985] 1 All 964 at 969

[93] Having considered the evidence and the relative cases of the claimant and the defendant, the court now grapples with a profound dilemma, as it is confronted by two diametrically opposing views regarding the veracity of the signatures present on the contested wills. In a case such as this one, the testimony provided by the attesting witnesses is key and must be carefully evaluated alongside the expert analysis regarding the authenticity of the disputed signature. This particular difficulty therefore mandates an inquiry into the legal stance and the manner in which the courts reconciles expert opinions with primary evidence.

[94] This court has obtained guidance from the learning posited in **Halsbury's Law of England**¹⁷ in which the learned authors state the proof of handwriting may require either lay or expert evidence, or both, depending upon the point at issue. A person's handwriting may be proved by the opinion of witnesses who are acquainted with it. The knowledge necessary for this purpose may have been acquired by the witness at any time having:

- (1) seen the party write; or
- (2) received communications purporting to come from him in answer to those addressed to him by the witness; or
- (3) observed documents purporting to be in the party's handwriting in the ordinary course of business.

... Testimony ... admitted is considered to be primary and not secondary in its nature. While evidence of opinion or belief is admitted for the purpose of proving handwriting where direct evidence of one who was present when the document was written is not available, and familiarity with the handwriting in question may be slight, an opinion based on mere inference is insufficient. ... Experts may also give their opinions as to whether handwriting is natural or imitated, and whether it shows points of comparison, but it is for the court to determine whether a particular piece of writing is to be assigned to a particular person, and documents may be submitted to the court for comparisons to be made. The weight to be attached to any expert evidence depends upon the skill of the expert and the evidence of a lay witness may be preferred to that of a handwriting expert." (my emphasis added).

¹⁷ Vol 11(2020) paragraph 875

- [95] The cited authority underscores the common practice of seeking an expert's opinion on disputed handwriting when direct testimony from a witness present during the document's creation is absent. This highlights the potential sufficiency of direct primary evidence in proving disputed handwriting. Yet, when confronted with differing accounts between expert opinion and a lay witness claiming first-hand observation, the court faces a pivotal task.
- [96] It is therefore clear that the weight attributed to expert evidence hinges on the expert's expertise¹⁸; nonetheless, even the testimony of a highly skilled expert can be eclipsed by that of a lay witness. Consequently, the court assumes the burden of carefully evaluating all evidence, giving due regard to each component. In instances where an expert's viewpoint diverges from the primary evidence presented by a lay witness, the court must harmonize these disparities. This entails a thorough assessment of the credibility and relevance of both the expert and lay witness testimonies, ensuring a comprehensive assessment of all available evidence. Further guidance on this matter can be found in the case of *Fuller v Strum*¹⁹.
- [97] In this case, Mr Jules Sher QC (sitting as a deputy judge of the High Court) faced a similar dilemma to the case at bar when he had to reconcile the evidence of the sole expert to that of the attesting witnesses on the issue of the authenticity of the signature on a disputed will. The Learned Judge considered the submission of counsel for the defendant who had alleged that the will was a forgery and made the following observation:

Mr Mitchell, for the defendant, has drawn my attention to *In re B (a child)* (split hearings: jurisdiction) [2000] 1 WLR 790, [2000] 1 FCR 297 where the issue was whether a fracture of the femur of a child occurred within 48 hours of her admission to hospital or about a week to 10 days before such admission. The judge had heard evidence from the grandmother and a family friend both of whom had seen this child over the week prior to the injury being identified in the hospital. Their evidence was that there was nothing to alert them to the fact that the child had suffered such a serious injury during the early part of that week. The radiologists' evidence (medically uncontroverted) was, however, that the injury was caused some seven to ten days beforehand. The judge had said that if the experts were right the grandmother and friend could not have been telling the truth, but that he was convinced that neither of them was lying. He then said that the experts must have been wrong, although he could not fault their reasoning. Part of that reasoning was that the X-rays showed early signs

¹⁸ For the avoidance of doubt, this court has carefully reviewed and observed the extensive qualifications of Ms. Beverly East as outlined in both her expert reports.

¹⁹ [2000] All ER (D) 2392; reversed on other grounds [2001] EWCA Civ 1879, [2002] 2 All ER 87, [2002] 1 WLR 1097.

of healing which put the injury back in time well beyond the 48-hour period. The Court of Appeal, however, held that the judge was not entitled to reject the uncontroverted medical evidence in favour of the evidence of the grandmother and friend. Dame Elizabeth Butler-Sloss said this at 796 of the former report: "The credibility or otherwise of the lay witnesses on the facts of this case, in my view, cannot stand so high as to make the evidence of the two consultant radiologists of no effect."

[98] In responding to this submission and his finding in relation to the use of the expert evidence which he was (like I have been in this case) urged to accept the Learned judge went on to say:

" ... [T]here is a world of difference between the type of expert evidence led in Re B and the evidence contained in Dr Giles's report in this case. The training of experts enables them to identify facts which a lay witness or a judge could not identify, without expert help. Such evidence may truly be described as scientific and the radiologists' evidence as to when an injury occurred falls plainly within this category. But some expert evidence may amount to no more than the drawing of inferences from facts observable as much by the expert as by a lay witness, and the inferences to be drawn from those facts may be capable of being drawn as much by the expert as by a lay witness. Of course, in such a case, the views of the expert are entitled to be given great weight. After all, the expert's training and experience will have equipped him or her to draw these inferences. But in relation to this type of expert evidence the judge, I think, is entitled to form his own view, having regard to, and balancing, the other evidence available to him in the case. The way Miss Rich, counsel for the claimant, put it in her skeleton argument is this: "Handwriting analysis is not a complete science and an analyst's conclusions, however carefully reasoned and supported by experience and reputation, are ultimately impressionistic and susceptible to error," (my emphasis added) As far as the Learned Judge was concerned :

The nature of handwriting expertise exemplifies both of these two different types of expert evidence. For example, a video spectral comparator allows the ink of signatures to be viewed in infrared light and also under conditions which cause fluorescence at different wavelengths, and using these techniques it is possible to examine features of the signatures not visible to the unaided eye. Dr Giles used these techniques as well as other techniques such as low-power stereomicroscopy but found no guidelines associated with the questioned signatures nor any impressions which could have been used as guidelines. So, her conclusion of forgery was not based upon such scientific evidence. True it is that she also concluded that the signature on the will of 31 March 1989 contained less fluency than that on the Receipt and Undertaking and this conclusion might have had some scientific input. But the central reasoning why she found that the will was forged was the number and nature of the differences between that signature and the genuine signatures of Mr Strum. In that respect, her evidence falls outside the purely scientific category in respect of which the judge would be helpless without expert assistance. I myself have noted the differences between the genuine signatures and the signature on the will, and although I acknowledge Dr Giles's expertise in both identifying those differences and drawing the inference of forgery, that is an inference that I am at least capable of drawing for myself. I have heard and seen the witnesses not only as to the fact of Max Strum's signing the will but as to the anxiety that seems to have accompanied that event. ... In the

circumstances, I consider that I am not only free to decide the forgery issue for myself but that it is my responsibility to do so, taking into account all the evidence before me, including Dr Giles's report. In my judgment, Max Strum did sign the will of 31 March 1989, albeit with a signature that varied somewhat from his usual signature. I find that he was extremely anxious on that day and it is possible that that anxiety might have contributed to the variation from his normal signature. Beyond that, I cannot speculate as to the reasons for the variation²⁰. (my emphasis added)

- [99] This approach was also followed in the Belizean case of **Zakir Husman v Mumtaz Husman** ²¹ where the court had to consider a very similar fact pattern as the case at bar in that the claimant therein sought the revocation of the Grant of Probate to the defendant on the basis that the will had not been duly executed by the deceased, the father of the claimant and the defendant. The claimant's case in that matter rested substantially on the evidence of the expert evidence, again like the claimant before this court and that expert, like Ms East, found that the signature was not that of the deceased. Benjamin CJ (as he then was) stated the court's mandate as such," it is ultimately a question of fact for the court to decide whether in the round the evidence as to the questioned signature leads to one conclusion or another. In doing so, the evidence of the lay witnesses may be accepted in preference to that of an expert."²²
- [100] The court in **Fuller** distinguished two distinct categories of expert evidence. One category relies on purely scientific principles, necessitating specialized knowledge which is beyond the comprehension of both laypersons and judges alike. In contrast, the other category of experts relies on the drawing of inferences from observable facts. Although scientific tools and methodologies are employed, the crux of this type of evidence lies in assessing disparities between the questioned signature and the genuine signatures of the deceased. Unlike purely scientific evidence, this inference-based approach, by necessity has its limitations. Thus it essentially becomes an interpretive endeavour, subject to the analyst's impressions and potentially susceptible to error. Regarding this latter type of expert evidence, the judge is therefore entitled to form his own view, having regard to, and balancing, the other evidence available to him in the case.
- [101] In the case at bar, the conclusion drawn by Ms. East must be weighed against the testimony of the attesting witnesses. After careful consideration of all evidence presented, it is clear that this court must consider the witnesses' credibility, the extent to which the court finds the defendant's account plausible, and how then if at all possible, to reconcile the primary evidence provided by the witnesses with the compelling expert opinion regarding the disputed signatures.

²⁰ Ibid pg 15.

²¹ Claim No 515 of 2011 per Benjamin CJ

²² Ibid para 23

- [102] Turning first to the expert's opinion, the court has considered the comprehensive findings made by Ms East on her examination of the discrepancies in the signatures on the wills as opposed to other undisputed documents signed by the Deceased.
- [103] This court does not doubt that Ms East used accepted scientific principles and techniques of document examination to test the natural variation of genuine signatures and handwriting. Indeed, this court is of the considered opinion that Ms East's examination was indeed flawless and that she was entitled to come to the opinion that she did with regard to the questioned documents.
- [104] However, it was clear to the court that as thorough and accepted the methods used by Ms East unquestionably are, her evidence at the end of the day falls outside the purely scientific category of expert findings.
- [105] It is therefore clear that if this court accepts her evidence as conclusive, it would decisively determine this matter. However, the court has also had the benefit of live testimony, subjected to cross-examination, from three witnesses who assert that they observed the Deceased execute the questioned wills. These witnesses testified that the wills were duly executed according to the law on both occasions and that they personally witnessed and attested to the Deceased's signature. It is open to this court to form its own view, having regard to, and balancing, the other evidence available in this case.
- [106] In assessing Ms Smith's testimony, she provided detailed evidence as the attorney who took instructions from the Deceased and ensured that the 2015 will accurately reflected his wishes. She testified that she read the will to the Deceased, who she confirmed understood it before signing, in her and Ms Robert's presence, both of whom attested the will. Furthermore, she asserted her belief that the person who signed the 2015 will was indeed the Deceased based on her verification of his driver's license during a subsequent land transfer. Ms Smith, a practising attorney who appears to take her responsibilities seriously, showcased a professional demeanour and delivered her testimony in a clear, careful, and balanced although somewhat defensive manner. This court therefore did find her to be a witness of truth as to the circumstances that arose leading to the existence of the 2015 will.
- [107] Ms Roberts provided testimony regarding both testamentary instruments and confirmed that she was one of the attesting witnesses for both the 2015 and the 2016 will. The court notes that there were indeed discrepancies between Ms Smith's and Ms Roberts' accounts of the creation of the 2016 will. However, after reviewing the evidence, I find that although Ms Roberts' account contains some errors, when compared to the evidence of Ms Smith, as to how the Deceased gave his instructions

for the 2016 will, this court does not find that either Ms Roberts or Ms Smith sought to mislead the court regarding the events in question.

[108] It is easy to marvel at Ms Roberts' error in replicating the 2016 will as an identical copy of the first will, save for the inclusion of the newly desired clause, rather than meticulously curating a document wherein she ensured that the dates were consistent throughout the document. However, she is not an attorney and in this court's mind shows the danger that is attendant to lay persons undertaking such tasks where errors can be fatal. Nevertheless, the crucial question is whether this court regards Ms. Roberts as a credible witness. On the balance of probabilities, this court so finds Ms Roberts to be a witness of truth.

[109] Additionally, this court finds that Mr. Gore meticulously noted the circumstances under which his signature was affixed to the 2016 document. He provided a clear and consistent account of the signing ceremony on August 31, 2016, and could also identify the Deceased as someone he had been acquainted with on numerous occasions due to the Deceased's frequent visits to his place of employment. On the balance of probabilities, I find Mr. Gore to be a credible and reliable witness.

[110] As to the claimant's allegation, which levels against the defendant and its witnesses a most serious accusation of participating in a conspiracy to forge the Deceased's wills, the question at hand is whether, based on the probabilities, Mr Gore, Ms Smith, and Ms Roberts were indeed involved in such forgery, which they roundly deny. The inherent probability of the event must be considered. In the authority of **Fuller v Strum**²³, the court considered what was the standard of proof in these instances and offered the following opinion:

“While I recognise that the standard of proof is the civil standard on the balance of probabilities, it is well recognised that where a serious allegation like forgery is made, the inherent improbability of the event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on a balance, the event has occurred.”

[111] In addressing this question, it's therefore crucial to consider the likelihood that all three witnesses would be inclined to participate in such activity and then perjure themselves in court to support the defendant's case. As to that, the court is not prepared to make such an adverse finding even in the face of the strength of the evidence of the expert's opinion.

²³ [200] All ER (D) 2392

- [112] Ms Roberts and Ms Smith provided comprehensive details about the execution of the 2015 will, and this court finds it is improbable in the extreme that Ms Smith was involved in any forgery. I unequivocally dismiss such an insinuation. Additionally, Mr. Gore and Ms. Roberts recounted the events surrounding the signing of the 2016 will. I acknowledge the testimony of the defendant's witnesses; if there had been forgery, they would have been complicit. I firmly believe that all of them were sincere witnesses, providing truthful accounts of the events that transpired at CGH's office in 2015 and 2016. Furthermore, it seems improbable to suggest a coordinated effort among them to commit forgery in the circumstances of this case.
- [113] As intimated earlier, this court accepting the evidence of the lay witnesses, must also take judicial notice of the name change of the deceased. This court therefore accepts the version of events proffered that took place in 2015 and 2016 by the defendant's witnesses and rejects the conclusion of the expert's evidence that the signatures were simulated.

Knowledge on the part of the deceased

- [114] This court having ruled that the signatures on the 2015 and 2016 wills were not simulated, must also consider the circumstances surrounding the testator's knowledge of the content of the 2016 will. This uncertainty arises from evidence indicating that Ms Roberts only read the newly inserted paragraph to the deceased before he signed the 2016 will. For completion of this matter, this issue ought to be addressed. It therefore follows that the defendant, as the propounder of the will, must prove affirmatively that the Deceased knew and approved of the will that he was executing.
- [115] In the case of **Fuller v Strum**²⁴ which went before the Court of Appeal on the sole issue of who had the burden to prove that the testator knew and approved the contents of his will, the court per Peter Gibson LJ stated as follows ²⁵:

"[32] ... The doctrine of 'the righteousness of the transaction' whereby the law places a burden on the propounder of the will, in circumstances where the suspicion of the court is aroused, to prove affirmatively that the deceased knew and approved of the will which he was executing, is a salutary one which enables the court in an appropriate case properly to hold that the burden has not been discharged

[33]... What is involved is simply the satisfaction of the test of knowledge and approval, but the court insists that, given that suspicion, it must be more clearly shown that the deceased knew and approved the contents of the will so that the suspicion is dispelled. Suspicion may be aroused in varying degrees,

²⁴ [2001] EWCA Civ 1879

²⁵ Ibid at paragraphs 32 and 33

depending on the circumstances, and what is needed to dispel the suspicion will vary accordingly. In the ordinary probate case knowledge and approval are established by the propounder of the will proving the testamentary capacity of the deceased and the due execution of the will, from which the court will infer that knowledge and approval. But in a case where the circumstances are such as to arouse the suspicion of the court, the propounder must prove affirmatively that knowledge and approval so as to satisfy the court that the will represents the wishes of the deceased. All the relevant circumstances will be scrutinised by the court which will be 'vigilant and jealous' in examining the evidence in support of the will" The court went on to consider the authority of *Hart v Dabbs*²⁶ underscoring that it is instructive to consider the decision of Lloyd J as illustrating the objective approach of the court in a case where the suspicion of the court has been aroused.

[116] In this case, the person propounding the will, who was alleged to have unlawfully killed the wealthy 74-year-old testator, was also the executor, a specific legatee, and the sole residuary legatee. This person actively participated in preparing the will and organized its signing by the deceased and witnesses, without any professional assistance. There was no evidence that the deceased prepared the will, gave instructions for its preparation, read the will, had it read to him, or retained a copy. The only indication of the deceased's knowledge of the will's terms was partially inaccurate information he mentioned to one legatee. The propounder did not testify. Despite these issues, Lloyd J admitted the will to probate, concluding that knowledge and approval could be inferred from the overall circumstances. In paragraph 34 of the judgment, Peter Gibson LJ restated Lloyd J's comments in the following manner:

"... The evidence showed that the deceased was not being deceived as to the nature of the document he was signing and that he had at least had the opportunity to see the documents before they were covered up. Lloyd J also noted that the provisions of the will were neither complex nor difficult to grasp. He said: 'So long as he read the document, he would have had no difficulty in taking in its provisions, even if someone else had prepared it.' Lloyd J said that apart from the gift of residue to the propounder there was not much in the will to provoke suspicion in itself, as being different from what one might expect the deceased to do. Lloyd J found that the evidence showed the deceased to have been alert

²⁶ 6 July 2000, unreported.

and not likely to allow himself to be persuaded to do what he did not want to do. On that evidence, the will was admitted to probate.”

[117] In paragraph 37 he also stated the following:

“In the present case there is no question but that the will was duly executed by the testator who (a) was fully of testamentary capacity, (b) was not said to be unable to read or to have poor eyesight, (c) was not subjected to undue influence, (d) initiated the will-making process by himself suggesting that he make a will to be witnessed by Mr Aghajanoff and Clara, (e) (f) having spent 45 to 60 minutes in Clara's bedroom over the will, emerged with the will (written out by Michael) in hand, (g) ..., (h) took away the executed will,”

[118] In the case at bar, although it was clear that the main prong of attack by the claimant to the will was the alleged forgery, the claimant also raised in her pleadings and by way of the evidence of her witnesses that the content of both wills could not reflect the true intention of the Deceased.

[119] Regarding the 2015 content, though this court is not in the least impressed with the defendant and how he gave his evidence such a consideration could not be relied upon to determine that the Deceased lacked mental capacity (not pleaded) or did not understand or approve of the contents of the will.²⁷ Rather this court was satisfied that the Deceased approved of the will's contents freely. This court is satisfied that the Deceased had full mental capacity, that he was a businessman of many years who carried out his businesses, that no one is said to have exerted any undue influence on him, that he initiated the will-making process himself and that he did, in fact, sign the same.

[120] Even though the court empathizes with the claimant as his wife at the time of his death and his children who came and supported this claim, this court is of the considered opinion that it was clear that the Deceased was a man of strong will and made clear that things were done his way or not at all. The claimant had not lived with the Deceased in excess of 15 years before his death but rather had a partner in the person of Ms Vigilant with whom he lived up to the time of his death. He may have had a good relationship with his children and grandchildren but it was clear that the Deceased had alienated his children (who supported the claim) to some extent from the mere fact that they no longer worked with him or were a part of the business which was of great importance to him.

²⁷ Paragraph 6 of the statement of claim filed 19/11/2021

- [121] As it pertains to the 2016 will, this court accepts that only the included paragraph in the 2016 will was read over to the deceased, but it presumes that the deceased knew and approved of the contents of the entire will. Both testamentary instruments were easily readable and not complex.
- [122] Additionally, it is accepted by this court, based on previous evidence, that the deceased instructed Ms Smith in 2015 regarding the contents of the will, which she read to him in full, and he understood and signed it. The content in the disposition of the 2016 document only differed in one paragraph, inserted at the deceased's instruction.
- [123] When the deceased instructed the inclusion of the new clause, 'it would be incredible that the testator did not know that there was more than just the one bequest in the will²⁸' when the newly inserted clause was read over to him and that he had not taken any of the opportunities that he had had to read the will, given that he was given custody of the 2015 and subsequent 2016 will. In this court's mind, he would have had the opportunity to read the document and ensure that his wishes were borne out in the wills before he handed the same to the defendant and there is no reason to doubt that the testator understood the will.
- [124] The court is satisfied that he knew and approved of its contents, and the defendant has discharged its burden. The court agrees with the counsel for the defendant's assertions that once testamentary capacity is proven, it is sufficient. There is no evidence that the deceased was influenced or lacked the mental capacity to execute his will or understand its contents. Therefore, this court finds that the deceased was aware of the wills' contents and in particular the content of the 2016 will in the circumstances.

Issue 2

- [125] This issue concerns the legal validity of the 2016 will. This is of significance as Ms Roberts deviated from the typical process of amending a will and produced a document with two different dates in the attestation clause. Essentially, she created a new will, which necessitated adherence to the established rules governing the creation of a will to ascertain its validity.
- [126] **Section 7** of the Wills Act²⁹ instructs the mode of executing a will. The section reads as follows:

No will shall be valid unless it shall be in writing and executed in a manner hereinafter mentioned; (that is to say,) it shall be signed at the foot, or end, thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be

²⁸ Fuller v Strum [2000] All ER (D) 2392, pg 455.

²⁹ Cap 473

made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

- [127] So far as is necessary to these proceedings, the section mandates that the testator must either sign the will or acknowledge his signature in front of at least two witnesses who are present together at the same time. The Act does not provide for an attestation clause; thus, the exclusion of the clause does not invalidate a will. However, the inclusion of an attestation clause does have legal implications which are interpreted by case law authorities.
- [128] The attestation clause typically appears at the end of the will and serves to confirm that the testator and witnesses have duly executed the will. While the presence of the attestation clause is not mandatory for the will's validity, its inclusion helps significantly if there is any dispute regarding execution or attestation. It should, from an abundance of caution, be included as its presence raises a presumption that the necessary formalities have been met³⁰. If, however, on the face of the instrument there are circumstances on which the court's suspicion is aroused, the propounder of the will should adduce evidence to the court to satisfy due execution.
- [129] In the case at bar, the attestation clause recorded that the will was "SIGNED" by the above-named TESTATOR as his Last Will in the presence of us both present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses". This clause clearly suggested that all parties affixed their signature on the same date. However, the date on the document showed that the testator "... set my hand to this my will this 30th day of December 2015". However, the signatures of the attesting witnesses purportedly had the date of 31st August 2016 placed next to them.
- [130] In the authority of *Salmon v Williams-Reid and others*,³¹ the court had to consider whether the will was duly executed in accordance with section 9 of the Wills Act as there were two different dates in the attestation clause. Section 9 is in para materia with section 7 of Cap 473. In paragraphs [55], and [56] the court stated:

[55] "It is important, also, that I should remind myself that in this case the will was either validly executed and attested in accordance with the requirements of section 9, or it was not. However

³⁰ omnia praesumuntur rite esse acta

³¹ [2010] EWHC 1315 (Ch)

much the will might reflect, in my judgment, the true testamentary intentions of the deceased, still it would not be valid if the requirements of section 9 were not complied with”.

[56] “Mr Ross Martyn’s submission is simple. Twice on the will, Marion Campbell wrote the date 22 August 2005 next to her signature. She must, he says, have done this for a purpose, that purpose being to say that this was the date on which she was appending her signature as the second witness. But as the will bears the date (?) 19 August 2005 it should, accordingly, be held that Marion Campbell was not present at the time when the deceased signed the will in the presence of Monica Palmer. As Mr Ross Martyn puts it, on the face of the will this is evidence that Marion Campbell signed as a witness three days after the deceased signed as testatrix.”

[131] The court went on to consider that there was, in fact, no requirement in section 9 or in law for there to be a date on the will, however, the date proves useful in determining whether there is a later document that stands to revoke an earlier will. The lack of a date or the inclusion of a wrong date cannot invalidate a will³². All that is required in law, so far as this issue relates, is for there to be the testator’s signature, which was either signed or acknowledged in the presence of two witnesses at the same time to which they attest. Where there are variances in the dates on the will the court is free to examine evidence to confirm the date of due execution, and rule upon it, factoring all the circumstances of the case.

[132] What the court is in fact concerned with is “... to give effect to the wishes of persons if satisfied that they really are their testamentary wishes and secondly the court will not allow a matter of form to stand in the way if the essential elements of execution are fulfilled”³³

[133] In this case, the sole issue as to the execution now surrounds the incorrect date. This court has had the benefit of observing the attesting witnesses under both examination-in-chief and cross-examination. Ms Roberts stated that she had copied the last will in its entirety, and then inserted the additional clause. Owing to her inadvertence she neglected to omit the previous date on the will to include the date of execution.

[134] This court also heard from Mr Gore who had also stated that the will was, in fact, duly executed on 31st August 2016. This court wishes to reiterate its displeasure with the lack of care of individuals assuming the role of counsel in the preparation of testamentary documents and not appreciating the

³² (per curiam in *Corbett v Newey* [1998] Ch 57, [1996] 2 All ER 914).

³³ In the Goods of Frances Peverett [1902] P 205 per Jeune P

implications of their actions. Wanting as it may, this court accepts the account proffered by both witnesses and has already found them to be a witness of truth. Thus, the court accepts the evidence that the will was duly executed on 31st August 2016 by the testator in their presence at the same time to which they attested and affixed their signature and thus there has been compliance with section 7 of the Wills Act. Given that the 2016 will is later than the 2015 will, the 2016 will revokes the earlier will. Accordingly, the 2016 will having been duly executed in accordance with the Wills Act is admitted to probate in its solemn form.

[135] For the reasons stated above the court orders as follows:

- (1) The claim is dismissed in its entirety
- (2) The counterclaim of the defendant is granted and the will marked the 31st August 2016 is pronounced in solemn form as being the last will and testament of the Deceased, Lesroy T.T. Carter
- (3) In the interest of salvaging some modicum of familial relationship costs to the Defendant on an unvalued claim on the dismissal of the claim only, pursuant to Part 65.5 CPR 2023 to be paid to him out of the estate of the Deceased.

Nicola Byer

High Court Judge



By The Court

Registrar