

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

Claim No. ANUHCv2017/0297

BETWEEN:

VAUGHN RAKEEM SAWYER

Claimant

And

**LAURA FRANCILLA HENRY and SHERRIE-ANN BRADSHAW as
Personal Representatives of the Estate of Ernest Randolph Henry,
deceased.**

First Defendants

And

**ONEIKA SPOONER as NEXT FRIEND OF THE MINOR ERNEST
RANDOLPH HENRY, DECEASED**

Second Defendant

2023: 11th November
2024: 27th February

JUDGMENT

- [1] **BYER, J.:** In the realm of justice, the court is often tasked to confront the echoes of the departed where the will stands as the final testament to one's wishes affording them the opportunity to communicate their last wishes clearly and precisely. Yet, within its confines, often human fallibility casts shadows of ambiguity reminding us of the imperfection that lingers even in a careful articulation of the last voice. Through legal examination, the court aims to unveil the realities in wills giving effect to the testator's true intention.
- [2] This matter tasks this court to determine the intended legatee in the Last Will and Testament of the decedent Ernest Randolph Henry (the Testator).

[3] On July 21st, 2018, the claimant, Vaughn Rakeem Sawyer filed an amended Fixed Date Claim Form (“**FDCF**”) with an accompanying affidavit against the first and second defendants in this matter wherein he sought the following reliefs:

- (1) A declaration that the claimant is the person named as the beneficiary in paragraphs 14, 15, and 18 of the Will of the Decedent, Ernest Randolph Henry who died on the 5th of January 2011.
- (2) An order directing the first defendants in their said capacities to convey to the claimant the gifts made to him under the said Will.
- (3) An order for an account by the first defendants of what is due to the claimant under the Estate of the late Ernest Henry, deceased together with interest thereon.
- (4) Such further or other relief as this honourable court shall see fit.
- (5) An order that the defendants shall pay the costs of this action.

[4] On 26th July 2018, and 20th September 2018, the first and second defendants challenged the assertion made by the Claimant by contesting that the gifts outlined in the specified paragraph were rather intended for the claimant's son, Rakeem Daniel Sawyer the second defendant in this matter.

Brief Background

[5] The question arose upon the will of the Testator dated 19th May 2009 whereby he devised his freehold estate and his residuary estate in the following clauses:

Clause 14: I give, devise, and bequeath to my great grandson **VAUGHN RAKEEM SAWYER** my freehold properties situated at Ffryes Estate and registered as Registration Section: 55 1184 A; Parcels: 172; 214; 334 and 338 to be his absolutely.

Clause 15: I give, devise, and bequeath to my grandchildren, **OMARDEEN WOODLEY, SHARISSA MORTON, RASHAWN HENRY**, and my great-grandson **VAUGHN RAKEEM SAWYER** my freehold property situated at Ffryes Estate and registered as Registration Section: Southwest Block: 55 1184 A; parcel 284 as tenants in common to be theirs absolutely in equal shares.

Clause 18: I give devise and bequeath to my grandchildren **OMARDEEN WOODLEY, SHARISSA MORTON, RASHAWN HENRY**, and my great-grandson **VAUGHN RAKEEM SAWYER**, in equal shares, 50% of the rest and residue of my real and personal Estate whatsoever and wheresoever existing.

- [6] The Testator died on 5th January 2011. At the date of his death, the Testator had six (6) known children to this court, grandchildren one being the claimant in this matter, and great-grandchildren, one being the second defendant in this matter.
- [7] The claimant claimed to be entitled to the estate in clauses 14, 15, and 18 of the will where his name had been mentioned and proffered that the description as great-grandson was done in error by the Testator. He founded his claim upon several grounds, those being, that his mother, now deceased was Sandra Alecia Francis, who was the daughter of the decedent. That there was in fact no person existing as a great-grandson of the decedent whose name was Vaughn Rakeem Sawyer. Further, in the other wills made prior to the Last Will and Testament, the claimant was named as the beneficiary for the same gifts as were made in clauses 14, 15, and 18 of the Decedent's Last Will and Testament.
- [8] The defendants refuted that the claimant was misdescribed and asserted that the claimant and the second defendant bore the same name "Rakeem" (although it was not the given name of the claimant but his "home name" while it is the given name of the second defendant as was clearly shown in his birth certificate), and the decedent on occasion called the second defendant Vaughn. The Testator clearly identified and repeatedly referred to his great-grandson as the beneficiary and not his grandson who bears the same name.
- [9] Evidence was led by all parties in this matter. There were two (2) witnesses called for the claimant, Ms Hazrone Benjamin (former common-law wife of the Testator), and the claimant himself. There were three (3) witnesses called on behalf of the defendants, namely: Ms. Oneika Spooner (the mother of the second defendant and next friend in this matter), Ms. Sherrie-Ann Bradshaw (Executor of the Estate), and Laura Francilla Francis (widow of the Testator and executor of his estate).

The evidence

Vaughn Rakeem Sawyer

- [10] The witness, Vaughn Sawyer exuded a certain amount of arrogance and animosity as he gave his evidence. Still, he was able to elucidate his familial ties to the Testator, affirming his status as the Testator's grandson through his maternal lineage. Having lost his mother early in life, he was raised by the Testator and Ms. Hazrone Benjamin (who to this day he calls his mother) in Antigua and Barbuda until the age of 12, when he was sent to the United States ostensibly for education but which move coincided with an incident in which he broke his arm in what appeared to have been an act of misbehaviour on his part. Notably, the witness highlighted that his grandfather affectionately called him Rakeem, a name honouring his late mother, thus leading to his dual identity as Rakeem Sawyer and Vaughn Sawyer.
- [11] The witness attempted to articulate a profound paternal bond with the Testator, detailing what he considered the latter's unwavering support and provision, even during periods of personal challenges and delinquency. Notably, the witness emphasized the Testator's consistent care, which extended to covering expenses for visits during school breaks while he studied abroad. Despite acknowledging disapproval of his occasional missteps, the witness affirmed the Testator's enduring support, painting a picture of a steadfast paternal figure. Furthermore, the witness adamantly stated that the misidentification lay in the description "great-grandson", clarifying that there was no great-grandson named Vaughn Rakeem Sawyer at the time of the Testator's passing. He asserted that his first son is known exclusively as "Rakeem" and was unfamiliar to the Testator by any other name, reinforcing his belief that the reference in the Will was, an inadvertent error.
- [12] During questioning on cross examination, the witness confirmed that while his grandfather affectionately referred to him as Rakeem, he clarified that his first son shares the same name. He asserted that despite occasional conflicts during his teenage years, their relationship remained argument-free until his grandfather's passing in 2011. The witness acknowledged past disagreements, predominantly

influenced by his grandfather's separation from the person he considered his mother, his grandfather's common-law wife Ms. Benjamin including incidents before 2009. He denied conversations about saying he wished his grandfather died during illness and any deterioration in their relationship before his grandfather's demise. The witness refuted claims of intentional misbehaviour, attributing outspokenness to typical household issues and asserting his grandfather always encouraged him to speak the truth.

[13] The witness disclosed that his grandfather suggested changing his last name to Henry for passport reasons, but he refused, and there was no dispute over it. Despite admitting to a fight at Princess Margaret School, the witness denied suspension and clarified that although his grandfather was upset about the incident, it did not significantly affect their relationship, occurring before May 2009. Additionally, during cross-examination, the witness vehemently refuted allegations of an incident involving taking items from a container, dismissing the entire situation as false. He denied assertions of telling his grandfather to "go and die" in April 2009, asserting no such argument occurred, and denied any argument with his grandfather in 2009 before his passing.

[14] In the cross-examination, attempts were made to indicate that the Testator was clearly able to differentiate between the witness and his son, particularly regarding provisions in the Will for grandchildren and great-grandson. Despite assertions made by the opposing counsel regarding the Testator's awareness of his son and Elias as great-grandchildren, the witness maintained, that the Testator in all circumstances was acknowledging him in the disputed clauses.

[15] During continued cross-examination, Counsel for the second defendant, the mother of Rakeem questioned whether all six children of the Testator were provided for in the Will, to which the witness responded affirmatively. The lawyer inquired if he Testator also provided for all his grandchildren, and the witness again answered in the affirmative.

Hazrone Benjamin

- [16] This witness evidenced that she was the common-law wife of the Testator for 26 years from 1974 to 2001. Her evidence largely supported the claimant's contention that he was affectionately known as Rakeem Sawyer who was raised with her and the Testator. This witness portrayed the Testator as caring for and solely providing for the claimant to the point where he was an adult and did so even after the witness and the Testator separated and the claimant went to live with her. In paragraph 5 of her witness statement, she stated that, "Earnest took Rakeem to live with us and he became a son to both of us. Rakeem would call us daddy and mommy. He still calls me mommy to this day."
- [17] It was the witness's contention, that throughout their relationship, the Testator had always expressed an intention to leave a portion of his estate to the claimant. This was his way of providing for the claimant and honouring the share of his Estate that he had always intended to give to the claimant's mother. To bolster this proposition, the witness underscored an occasion when the Testator had come to her house to express his displeasure at one of his daughter's actions in creating his Will and leaving the claimant and one known as Francilla out of his Will¹. The witness stated, "He made it known to us that he would be rewriting the Will to include Francilla and Rakeem". The witness however failed to recall the date on which this incident had occurred.
- [18] Amid intense cross-examination, the witness, remained resolute and unwavering in her responses, portraying a strikingly frank and honest demeanour before the court. Despite rigorous questioning about the dynamics between the Testator and the claimant, she maintained her candour, revealing a depth of insight into their relationship which clearly did not show a lack of rancour on occasion but she maintained that despite this, and despite the claimant acting out of control on occasion, that the Testator still cared very deeply for him.

¹ See paragraph 13 of Hazrone Benjamin's witness statement.

[19] Thus, despite attempts to suggest the Testator's frustration with the claimant, this witness' testimony conveyed a nuanced understanding of their relationship. Her portrayal of the Testator's financial assistance and occasional scolding in her mind were not signs of abandonment but expressions of a caring yet complex bond between the two males.

Witnesses for the defendants

Oneika Spooner

[20] The witness gave evidence that she is the mother of the second defendant and that the Testator had visited her home several times as he was attached to her two sons. She also attested to the fact that as far as she was aware, at the time of the Testator's death the claimant and the Testator were not on speaking terms as their relationship had deteriorated. She also spoke of her and the claimant at one point being of the view that the gifts in the disputed clauses belonged to their son Rakeem. In fact, this witness made it clear that during the Testator's lifetime, he had given gifts of land to the claimant and bearing in mind that there had been a breakdown of the relationship as between the claimant and the Testator, she was of the belief that the gifts were in fact intended for her son.

Sherrie-Ann Bradshaw

[21] This witness is one of the administrators of the estate of the Testator. Her testimony was confined to her role as an administrator of the estate and could not add anything to the background of the familial interactions or the intention of the testator.

Laura Francilla Henry

[22] Mrs Henry is the widow of the Testator and she testified to the tense relationship that existed between the claimant and the Testator when the claimant was a teenager when

he displayed rudeness and disrespectfulness to her. She also gave evidence that the claimant's behaviour caused the Testator to send him to live with one of his aunts in Miami. While in the USA, he found himself in trouble with the law for stealing. Consequently, his aunt sent him back to Antigua. The claimant was also suspended from his then High School Jennings Secondary School and subsequently transferred to Princess Margaret Secondary School. According to the witness, the claimant continued to get in trouble ending up in police custody in Antigua, for stealing a bicycle. On this occasion the witness' evidence was that the Testator refused to assist the claimant while in custody and that he in fact became infuriated by the shenanigans of the claimant

- [23] This witness' evidence was therefore that the claimant and the Testator had continuous friction up to the date of the creation of the will and that just prior to the making of the will the Testator had made it clear that he was washing his hands of the claimant. However, she also made it clear on cross-examination that even though the Testator may have always said that he no longer was prepared to support the claimant he continued to do so for the sake of his deceased daughter, the claimant's mother.

The claimant's submissions

- [24] Counsel argued that the court must apply the cardinal rule to construe the Will to aid in a determination of the question at hand. This rule was described in Halsbury's Laws of England (3rd edition), volume 39, paragraph 1438, on page 950 as follows:

"The cardinal rule of English law as to the effect of a will is that the intention of the testator, as declared by him and apparent in the words of his will, has effect given to it so far and as nearly as may be consistent with the law. The application of the rule requires a court of construction to consider two matters: first, what was the intention of the testator disclosed by the will; and secondly, how can effect be given to that intention. Of the first principle, there are two branches:

- (i) that the testator's intention is to be sought in the words that he has used in his will, given, normally their natural and grammatical meaning;
- (ii) that this meaning can be admitted to modification to accord with a real intention shown by the will as a whole".

[25] Counsel went on to state further that in instances where the name is apparent but there is a misdescription, the name will prevail against an error of description such as in this case. To bolster her position counsel cited paragraph 1528 of the aforementioned authority which reads as follows:

"Where the donee is designated by name and description, if there is a person who has the name and the description is incorrect for him and all others, the description is neglected: for it is a rule that the name will prevail against an error of description."

[26] It is counsel's contention that the "name alone, however, will not prevail unless it appears that the description is mistaken". The application of these rules was described in the cases and the circumstances in which the court would resort to extrinsic evidence to aid in the interpretation of a Will was discussed in the cases of **Drake v Drake**², and **Charter v Charter**³.

[27] In **Charter v Charter** *supra*, the Testator designated "my son Forster Charter" as the Executor and used the same language for gifts, despite having no living son with that exact name at the time of his death. Although the Testator had a son named "William Forster Charter," he was not known as Forster Charter but rather as William or Willie.

² (1860) 8 HL Cas 172 at 179 per Lord Campbell LC

³ (1874) LR 7 HL 364 at 380–381 per Lord Cairns LC

Extrinsic evidence was consequently employed by the Court to ascertain the Testator's intention.

[28] Similarly, in the **Drake v Drake** case supra, the Testator bequeathed a gift to "my niece, Mary Frances Tyrwhitt Drake," even though he did not have a niece by that precise name. Instead, he had a sister-in-law with that name and several nieces with names similar to the designated donee. The Court in **Drake** engaged in a thorough analysis to address the apparent ambiguity in the Will, acknowledging that the named donee was not the testator's niece. It considered the positive relationship between the named donee and the testator, as well as the good relationships with his nieces, whose names were similar but not identical. Ultimately, the Court concluded that there was no clear and unequivocal evidence determining the intended donee. As such, the Court, in **Drake** properly decided that the residuary gift to "my niece, Mary Frances Tyrwhitt Drake" would fail.

[29] In relying on the authorities, counsel for the claimant went on to assert the claimant's entitlement as the intended beneficiary named in the Will. Counsel averred that the Claimant's various names, including Vaughn Aaron Sawyer and Vaughn Sawyer also known as Rakeem Sawyer, are acknowledged in official documents, which include his social security card and used in his custody proceedings. Counsel averred that both defendants concede that the name Vaughn Rakeem Sawyer unequivocally referred to the Claimant. It was therefore contended that the names specified in the Will explicitly exclude the second Defendant, Daniel Rakeem Sawyer, as the intended beneficiary.

[30] Furthermore, the Claimant argued that even if the court perceived ambiguity in the designation of the donee, there is no evidence indicating the Testator's intention to benefit the second defendant. The absence of any demonstrated interest or specific relationship between the Testator and the second Defendant was highlighted as crucial in her submissions and it was the contention that therefore there as nothing to suggest that the gift was in fact intended of the second defendant.

The first defendant's submission

- [31] Counsel representing the first defendants asserted that the testator unambiguously identified "my great grandson" in the clauses under dispute. His argument emphasized that the Testator consistently differentiated between his grandchildren and great-grandson in each relevant clause, explicitly identifying Rakeem as the great-grandson. This distinction was therefore crucial as all other beneficiaries in the clauses were designated as grandchildren, highlighting Rakeem's unique status as the great-grandson.
- [32] In the submissions of the first defendants, the use of the term "great-grandson" was emphasized as a significant factor, especially considering that the testator commonly referred to his great-grandson as Rakeem (the child's name) and Vaughn (his father's name) in everyday discourse. Additionally, Counsel contended that the testator's mental capacity at the time of executing the Will which was beyond question, was supported by the claimant's admission, that the Testator could distinguish between his grandchildren and great-grandson which lent even more credence to the argument that the Testator meant what he had stated in the Will as to the grouping he intended to benefit, his "great grandson."
- [33] Furthermore, counsel underscored the centrality of determining the testator's intent in this case. The argument posited that the intent can be deciphered from the specific language used in the Will, particularly the distinction between the grandson and great-grandson who share the name Rakeem. Using the term "great-grandson" was seen as the key to identifying the intended recipient of the gifts in the contested clauses.
- [34] Counsel referred to the well-established armchair rule, allowing the court to place itself in the testator's position and consider the surrounding circumstances when the Will was executed. The authority of **Boyes v Cook**⁴ was cited to support this approach. Counsel contended that, in the current case, examining the evidence of the claimant's disrespectful behaviour towards his grandfather before the Will was made, along with

⁴ (1880) 14 Ch D 57

the relationship between the testator and his great-grandson, was crucial to determining the testator's intention and supported the contention of the first and second defendants that the beneficiary in the will at clauses 14,15 and 18 was the son of the claimant and not the claimant himself.

Second defendant's submission

[35] Counsel for the second defendant proffered two issues for the court's consideration, those being, whether the clauses are void for uncertainty and if not, whether the clauses can be properly construed to ascertain the testator's intention.

[36] As it relates to the first issue, counsel argued that the court is duty-bound to put a fair meaning on the terms used where there may be some ambiguity or uncertainty as it pertains to the subject or object of a gift and not simply void the whole for uncertainty relying on the authority of ***Re Roberts Repington v Roberts-Gawen***.⁵

[37] Counsel also went on to cite the authority of ***Ellis v. Crampton and Others***⁶, where in that case, the court ruled that a gift is only deemed void for uncertainty if the range of objects is excessively vague or the difficulty of ascertainment is nearly impossible to overcome.

[38] Counsel argued that in the present case, the Testator having meticulously named and classified intended beneficiaries, reduced the likelihood of uncertainty. Therefore, the level of uncertainty here was not insurmountable. Counsel relied on the principles of the armchair rule, as seen in ***Boyes v Cook***⁷, which allows the Judge to place themselves in the Testator's perspective, considering surrounding circumstances when making the Will to discern the Testator's intentions as well as the need for the court to immerse themselves in the testator's perspective when he was making the will.

⁵ [1880 R. 1096] (1881) 19 Ch.D. 520.

⁶ [1957] 1 WLR 788

⁷ (1880) 14 Ch D 57

[39] Counsel in his submissions therefore also relied on the authority of ***Re Burke***⁸, wherein Laidlaw J articulated a crucial guiding principle for the Court to undertake a concentrated consideration of the circumstances influencing the testator's disposition of property, giving due weight to those factors in determining the testator's intentions. By doing so, the court is mandated to thoroughly examine the entire will, interpreting the language and provisions to discern the testator's underlying intention. The Court is then encouraged to uphold that intention unless constrained by a legal rule or principle from doing so.

[40] Counsel also proffered the authority of ***Pinnel v Anison and others***⁹ for consideration. In that case, the Court used extrinsic evidence, such as witness statements, to decide the intention of the testator. Thus despite the challenge of a misnamed sister, the Court rejected claims that it was a drafting error and refused to declare the gift void for uncertainty. In the present case, it was submitted that the Testator carefully identified the class he intended to benefit as a "great-grandson." Witnesses testified to a strained relationship between the Claimant and the Testator, while highlighting the Testator's close and loving bond with his great-grandson, possibly referred to as "Vaughn." Importantly, it was noted that the Testator reiterated the intended beneficiary three times, reducing the likelihood of a mistake or misdescription.

[41] Counsel stated further that despite the claimant acknowledging the Testator's unimpaired mental state in 2009, the claimant expressed reluctance to accept alterations made by the Testator during that period. This incongruity in the contention of Counsel must raise legitimate questions regarding the Claimant's genuine comprehension and acceptance of the Testator's mental capacity during the critical period of amendments having been made to the will.

[42] Counsel for the second defendant therefore contended that when one considered the evidence that was elicited from the claimant and his witness that the picture they

⁸ 20 D.L.R.(2d) 396

⁹ [2005] EWHC 1421 Ch

attempted to paint was skewed and fraught with inconsistencies and half-truths which they asked the court to level against their credibility as a whole.

- [43] That being said, they therefore contended, that in answering the two issues, that there was no uncertainty as to who was being referred to in the will of the Testator. The clauses therefore did not meet the threshold of such uncertainty to be considered void and that further in any event, given the nature of the relationship that existed between the claimant and the Testator the only logical conclusion of the person meant to benefit would have been the second defendant.

Issue

- [44] The singular issue to be determined by this court is therefore whether either the claimant or the second defendant was the intended legatee in clauses 14, 15, and 18 of the will of the Testator, or whether the clauses should be void for uncertainty.

Law and analysis

- [45] The starting point for this determination must therefore be an examination of the disputed clauses themselves as set out in paragraph 5 herein. In each of the clauses, the class of the person identified is “my great grandson” who at the time of the will would have been the Claimant’s son, Rakeem Sawyer, while the name seems to be ascribed to the claimant himself as Vaughn Rakeem Sawyer. This introduces a unique complexity, as both the name and the description have potential applicability to different individuals.
- [46] The law is now well established as to be considered trite that in construing a will, the court must ascertain the intention of the testator as expressed in the will, whilst reading the will as a whole. There are however circumstances where, such as in this case, in so doing, the court may have regard to extrinsic evidence.

[47] In *Bernasconi v Atkinson*¹⁰ Vice-Chancellor Sir W. Page Wood elucidated the approach to be adopted when faced with a discrepancy between the name and description of a legatee. The court held in part that:

“...Where a legatee is pointed out by name and description, and there is no person to whom the name and description both apply, but the name only applies to one and the description only applies to another, the Court will endeavour, from such of the extrinsic circumstances as are admissible, to ascertain the person meant by the testator ...”

[48] The court underscored the pivotal role of extrinsic evidence in determining the intended beneficiary of a bequest in cases where the name and description are not entirely congruent.

[49] This court notes the argument of counsel for the claimant in this regard. While accurately emphasizing the cardinal rule guiding the construction of the will, which is to discern the testator’s intention.

[50] Counsel contended that where the name is apparent and it is established that the description was erroneous, the name should invariably prevail over the error of description. Yet, a careful reading of the relevant legal authorities, including paragraph 1528 of Halsbury's Laws upon which counsel relies, refutes what appears to be a clear assertion on their part. Instead, what is evident, is that the prevailing rule mandates the name's supremacy only when the description is erroneous for all potential recipients. In the present case, there exists another nominee, the claimant's own son, Rakeem Sawyer, for whom the description is apt. The fact that he may in fact have been occasionally referred to as Vaughn by the Testator adds a layer of complexity to the analysis, which cannot be overlooked. The rule therefore cannot be applied in a vacuum.

¹⁰ (1853) 10 Hare 345 at 351.

[51] Furthermore, counsel's reliance on precedents of **Drake v Drake**¹¹ and **Carter v Carter**¹² to support her argument did not seem to appreciate that such rigid interpretation was to be subsumed by the discernment of the testator's true intent. Thus, in **Drake v Drake**¹³, the Lord Chancellor (Lord Campbell) having considered the legal arguments proffered by counsel on behalf of Mary Frances Tyrwhitt Drake, which was argued quite in a similar fashion before this court, opined the following:

“...there is a maxim that the name shall prevail against an error of demonstration, but then you must first show that there is an error of demonstration, and, until you have shown that, the rule *veritas nominis tollit errorem demonstrationis*¹⁴ does not apply. I think that there is no presumption in favour of the name more than of the demonstration. Upon referring to the numerous cases that have been cited at the bar, it will be found that there are more instances in which the demonstration prevailed than in which the name prevailed.”

[52] Similarly, in the authority of **Garland v Beverly**¹⁵, Fry J, cited with approval the authority of **Drake v Drake**¹⁶ among others, having heavily criticized the maxim ‘*veritas nominis tollit errorem demonstrationis*’. In citing the maxim, Fry J had this to say:

“... it is a maxim from which I feel it exceedingly difficult to derive any light. What are the conditions under which that maxim is to be applied? You must first find the “*veritas nominis*,” that is, you must find the true intent of the testator as expressed in the name. In the next place, you must find that there is “*error demonstrationis*,” that is to say, you must find that the demonstration or description is inaccurate. But when I have

¹¹ Op cit.

¹² Op Cit.

¹³ Op Cit at 179 per Lord Campbell LC

¹⁴ “the truth of the description removes an error in the name”

¹⁵ (1878) 9 ChD 213 at 218–219.

¹⁶ Op Cit

found those two things, I want no maxim at all. It appears to me, therefore, that it is like a pilot who comes on board your vessel when you have got into the harbour. ...”

Having considered the authorities, he then went on to state:

“...I advert to this in order to show that my decision does not rest upon the principle of any presumption or inference of law in favour of the name over the description taken abstractedly. I have neglected that principle, although if I had followed it, it might have afforded an additional support to the conclusion at which I have arrived. The ground upon which I have proceeded is simply this. I have inquired of myself, looking at the will and the circumstances of the case, in which the probability of error the greater, in the name or in the description? I answer that the probability of error is greater in the description than in the name, and therefore hold that the devise was to William and not to the eldest son.”

[53] The principles elucidated in the authorities provide valuable guidance for courts in interpreting wills where there is ambiguity regarding the identity of the intended beneficiary. The overarching objective remains to ascertain the testator's true intentions, which necessitates a contextual analysis of the entire will and the surrounding circumstances. While legal maxims such as 'veritas nominis tollit errorem demonstrationis' may offer some theoretical framework, their practical utility is often limited, as emphasized by Fry J in **Garland v Beverly**¹⁷.

[54] Further Halsbury's Laws of England: Wills and Intestacy¹⁸ provides comprehensive guidance on the treatment of discrepancies between names and descriptions in testamentary dispositions, offering a comprehensive perspective states as follows:

¹⁷ Op Cit.

¹⁸ Construction of Wills (3) Principles of Construction of Wills (v) Misdescription of Property or Persons 278. The discrepancy between name and description (Volume 102 (2021), paras 1–566; Volume 103 (2021), paras 567–1304)4.

Where a donee is designated by name and description, then, if there is a person who has that name and the description is incorrect for him and all others, the description is ignored, for it is a rule that a name will prevail against an error of description unless the false description is due to the fraud of the alleged donee. The name alone, however, will not prevail unless it appears that the description is mistaken. For the rule to apply, it is necessary first to show that there is an error in the description. Similarly, where a description is correct and sufficient, an incorrect name may be ignored.

Where, however, either the name alone or the description alone is sufficient to identify a subject, and they do not identify the same subject, then, according to the circumstances of the case, the description and not the name, or the name and not the description, may prevail. The name is in fact only a mode of description, and the question is to determine which portion of the whole description is to prevail. For this purpose, evidence is admissible of all the facts known to the testator at the date of the will, and in certain circumstances, direct evidence of his intention may be received. On the evidence properly admissible, a test often applied is to inquire whether the testator was more likely to err in the name or the description. Thus, if there is a person for whom the name is accurate, but the testator was not intimate with him, and there is also a person for whom the name is inaccurate, but the description is sufficient to identify him, and the testator was intimate with him, the latter is the person entitled. If the question cannot be answered, the gift is void for uncertainty. (My emphasis added)

[55] So, how does giving effect to the testator's intention practically translate in like circumstances before the courts? The case of **Perrin v Morgan**¹⁹ provides a guiding light in this matter. On page 420, Lord Romer emphasizes:

¹⁹ [1943] A.C. 399

'I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the Court is entitled, to use a familiar expression, "to sit in the testator's armchair". When seated there, however, the Court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said.'

[56] Additionally, Lord Hoffmann in the Privy Council case of ***Charles v Barzey***²⁰ on page 439, paragraph B, stated that:

"The interpretation of a will is in principle no different from that of any other communication. The question is what a reasonable person, possessed of all the background knowledge which the testatrix might reasonably have been expected to have, would have understood the testatrix to have meant by the words which she used.'

[57] The above-mentioned provisions underscore that the court should not attempt to rewrite or make a new will based on suspicions about the testator's intentions. Instead, the court should rely on the language of the will, read in light of the surrounding circumstances to discern the true intent behind the provisions. It is therefore noteworthy and fitting to address the issue proffered by counsel for the second defendant, which concerned whether the disputed provisions should be deemed void for uncertainty. This issue subsumes the broader issue of discerning the true intention of the testator. Courts historically proceed cautiously in voiding wills for uncertainty, resorting to extrinsic evidence to aid in construction. It is when reconciliation is impossible recalcitrant provisions are voided²¹.

²⁰ [2003] 1 WLR 437

²¹ Re Potter's Will Trust [1944] ch 70.

[58] In *Re Potter's Will Trust*²² Lord Greene on page 77 stated that, '*It is a fundamental rule in the interpretation of wills that effect must be given, so far as possible, to the words which the testator has used. It is equally fundamental that apparent inconsistencies must, so far as possible, be reconciled and that it is only when reconciliation is impossible that a recalcitrant provision must be rejected ...*'

[59] Halsbury's Laws of England: Wills and Intestacy reads:²³

"The court will attempt to ascertain the testator's intention as expressed in the will by reference to all admissible matters. Where it is impossible to ascertain the testator's intention in this way, uncertainty may be avoided by the proper admission of extrinsic evidence, which in certain circumstances may include evidence of the testator's intention, but, if such evidence is insufficient to resolve the ambiguity, the gift fails for uncertainty."

[60] In the process of interpreting the language of the will, the court must navigate the intricacies of the testator's intent, harmonizing the text with the circumstances prevailing during its drafting and execution. To elucidate this intent, the court places itself in the testator's armchair, endeavouring to perceive the situation from his perspective at the time of execution. Additionally, a holistic examination of the entire document is indispensable, as the court endeavours to extract coherence and consistency from all its provisions.

[61] In clause 14 the testator devised property "... to my great grandson **VAUGHN RAKEEM SAWYER** my freehold properties situated at Ffryes Hill Estate..." In clause 15 and clause 18, the testator devised "... to my grandchildren, **OMARDEEN WOODLEY, SHARISHA MORTON, RASHAWN HENRY**, and my great-grandson **VAUGHN RAKEEM SAWYER ...**".

²² [1944] Ch 70

²³ "Construction of Wills (3) Principles of Construction of Wills(iv) Uncertainty²⁶⁵. Admission of extrinsic evidence to avoid uncertainty". (Volume 102 (2021), paras 1–566; Volume 103 (2021), paras 567–1304)4.

- [62] The competition is between one whom the testator did mean and another whom it is equally clear that he did not mean in each respective clause. Is the devisee Vaughn Rakeem Sawyer, the grandson, or Rakeem Daniel Sawyer, the great-grandson? The court will assess the clauses in turn, and review the evidence before it.
- [63] A clear reading of the language in clause 14 of the Will affords no clarity to help this court. Accordingly, the court turns to aids of construction, as the existence of familial ties, affection, and the like will assist the court in discerning the testator's intention.
- [64] Upon a careful review of the evidence, the court discerns that the claimant's testimony exhibited a lack of complete candour concerning his conflicts with his grandfather. Nonetheless, it becomes irrefutable from the proceedings that the grandfather harboured profound affection for the claimant, treating him not solely as a grandchild but as his own offspring. Despite this, occasional tensions in their relationship are unmistakable. This was corroborated by testimonies from other witnesses presented before the court. The court unequivocally regards Ms. Benjamin as a witness of truth, crediting her testimony with honesty, integrity, and sincerity. Given her unwavering candour and forthrightness, the court accords substantial weight to her account of events. With that being said, the court firmly believes on a balance of probabilities in the veracity of her assertions, finding the likelihood of events unfolding as she depicted to be high, plausible, and convincing.
- [65] Additionally, the court acknowledges and accepts Ms. Spooner's testimony regarding the bond between the Testator and the great-grandchild, Rakeem Sawyer, as well as her assertion of a strained relationship between the claimant and the Testator just previous to his death but cannot necessarily accept that that strain amounted to a total breakdown in communication between the two given the nature of the relationship as stated by Ms Benjamin. The court's focus lies on all the facts available to the Testator at the time of making and executing the Will, rather than solely on the circumstances leading up to his passing. The court also acknowledges Mrs. Henry as a credible witness, bearing witness to the truth in her testimony, save where opinion evidence is given. The court finds her account of the claimant's delinquent behaviour as a youth

and the subsequent discord between the claimant and the Testator to be credible. Additionally, the court accepts her testimony regarding the quarrel between Vaughn and the Testator, as well as the emotional response elicited from the Testator, including his tears.

[66] Based on the evidence provided by the witness statements, and the evidence elicited at trial, the court acknowledges and accepts on a balance of probabilities, that while there was a strained relationship between the Testator and the claimant, the court does not find evidence to suggest that the Testator completely severed ties with the claimant with the intention to make no provision for him at all. Rather, it is apparent that their relationship encountered challenges, as is common in many familial dynamics. The court recognizes that disagreements and conflicts are inherent in parent-child relationships, particularly during the adolescent years, and views the incidents recounted within this context. Moreover, considering that the Testator had six biological children of his own, the court believes he would have been familiar with and understood adolescent behaviours.

[67] The evidence presented not only sheds light on the relationship between the Testator and the claimant but also offered insight into the likely temperament of the Testator. It appears to this court that he possessed qualities of forgiveness, love, kindness, and care, coupled with a no-nonsense demeanour. Moreover, the evidence suggested that he consistently fulfilled his role as a provider, demonstrating a steadfast commitment to his responsibilities. Despite moments of frustration with the claimant, the Testator maintained his support and provision for him, even amidst admonishments. Furthermore, considering the claimant's mother's passing, the Testator's sense of responsibility towards the claimant remained unwavering, showcasing his dedication to caring for him, even during times of difficulty. While the court acknowledges instances of heightened frustration, the overarching evidence suggests that the Testator's commitment to providing for the claimant persisted throughout their relationship. Therefore, it is improbable that the Testator would have completely disowned the claimant based on these incidents. The Court also accepts that in saying

so the Testator would have established a relationship with his great grandchildren as well and in particular the second defendant and made provision for him.

[68] Having thoroughly considered the evidence regarding the relationship between the Testator and the claimant, the court now turns its attention to the will in its entirety. In doing so, the court finds its position fortified based on several key observations.

[69] Firstly, the court notes that prior to executing the will, the Testator had had a falling out with one of his daughters, yet still chose to provide for her in the document. This demonstrated the Testator's willingness to maintain familial ties and fulfil his obligations despite interpersonal conflicts, further supporting the notion that he would not have completely severed ties with the claimant solely based on their occasional strained relationship.

[70] Secondly, upon reviewing the provisions of the will, it becomes evident that the Testator made extensive provisions for his relatives, particularly his children. Despite any personal grievances or disagreements, the Testator ensured that his familial responsibilities were met by including provisions for all his children in the will. This comprehensive approach to providing for his family members suggests a consistent pattern of care and support, reaffirming the court's belief that the Testator would not have excluded the claimant entirely from his estate based on their relationship difficulties.

[71] Moreover, the provisions for his children underscore the depth of the Testator's familial connections and responsibilities. It is noteworthy that the claimant was raised by the Testator as his own son, rather than simply as his grandson, indicating a significant familial bond between them. This distinction further emphasizes the Testator's commitment to the claimant's well-being and support, transcending the traditional grandparent-grandchild relationship. Therefore, considering the Testator's inclusive approach to providing for his children and the familial role he assumed towards the claimant the court finds it implausible that he would have severed ties with him in his testamentary intentions. Instead, the court interprets the provisions of the will in light

of the Testator's familial relationships and responsibilities including to those youngest in the family.

[72] With that being said, this leads the court to the conclusion that the claimant was indeed intended to be the beneficiary of the estate in **clause 14** of the Will and it being consistent with the testator's intention to provide for the claimant.

[73] Notwithstanding, this court cannot ignore the language of **clauses 15 and 18** of the Will. It is established before this court that Rakeem Daniel Sawyer was the only great-grandson born at the time of the will's execution. Therefore, just as it is reasoned that the claimant is included in the will, based on the familial context and the testator's relationship with him, the court also concludes that provisions for Rakeem Daniel Sawyer would be consistent with the Testator's intentions. This inference is strengthened by the testimonies of Ms. Benjamin and Ms. Spooner, which depict the deep affection the Testator held for his great-grandchild, Rakeem Daniel Sawyer. Their accounts underscore the familial bond shared between the Testator and Rakeem, suggesting a similar intent to provide for Rakeem Daniel Sawyer. Additionally, the court accepts that the Testator sometimes used the name "Vaughn" in reference to Rakeem.

[74] Further in looking at the provision, strikingly the testator made a deliberate distinction between two groups of beneficiaries in clauses 15 and 18 of the will. Specifically, the Testator separated grandchildren from the individuals explicitly mentioned as beneficiaries and the great-grandchild. In this court's mind this therefore indicated an intention by the Testator to differentiate between these groups and had specific individuals in mind to benefit under each clause.

[75] The court in looking at the provision, enquired of itself in which the probability of error was greater, in the name or in the description? To this court's mind, in this respect, the Testator was more liable to err when he described the legatee by name. The clauses demonstrate to this court, that the Testator exercised diligence and careful

consideration in delineating the beneficiaries reducing the likelihood of error or ambiguity in the description under these two provisions.

[76] Therefore, based on the foregoing, the court finds it reasonable to infer that the Testator intended the legatee to be the claimant in clause 14 of the Will, and for the legatee to be the second defendant Rakeem Daniel Sawyer in clauses 15 and 18 of the will therefore making it clear that there is sufficient certainty in the clauses to reject the contention that they should be voided.

[77] For completeness, the court wishes to emphasize that the initiation of the previous action and the beliefs of the parties hold no relevance to the present case. It is within the court's jurisdiction to determine the interpretation of the will, and since the previous claim has been discontinued, no formal rulings had been issued by the court. Therefore, the argument in question is deemed frivolous, as it neither impacts nor affects the current proceedings.

[78] My orders as regards the claimant's amended fixed date claim form are, therefore, now as follows:

- (1) It is declared that the claimant is the person named as the beneficiary in paragraph 14 of the Will of the Testator, Ernest Randolph Henry who died on 5th January 2011.
- (2) It is declared that the second defendant, Rakeem Daniel Sawyer is the person named as beneficiary in paragraph 15 of the Will of the Testator, Ernest Randolph Henry who died on 5th January 2011.
- (3) It is declared that the second defendant, Rakeem Daniel Sawyer is the person named as beneficiary in paragraph 18 of the Will of the Testator, Ernest Randolph Henry who died on 5th January 2011.

- (4) It is ordered that the first defendants in their capacities convey the gifts to the intended beneficiaries as declared by this court under the Will of Ernest Randolph Henry who died on 5th January 2011.
- (5) The first defendants shall therefore produce an account of the estate as it relates to the second defendant's bequest at clause 18 of the will, such account to be provided within three months of the date of this order
- (6) In that the claimant was only partially successful on his claim, he shall be paid 75% of the prescribed costs on an unvalued claim to be borne by the estate.
- (7) Additionally, the costs of all defendants to is to be bourne by the Estate to be assessed if not agreed within 21 days of today's date
- (8) I wish to thank counsel for their assistance in this matter and apologise for the delay in the production of this judgment, it was due to circumstances beyond my control.

Nicola Byer

High Court Judge

By the Court

Registrar