

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2022-03693**

**IN THE MATER OF  
THE WILLS AND PROBATE ACT CHAPTER 9:03**

**Between**

**ROGER MERVIN SPRINGER**

**(Administrator Ad Litem of the Estate of Alfred Kinsale)**

Claimant

And

**DELMA HENRY**

**The Executrix of the Estate of LYNETTE GEMMA CRICHLow, Deceased)**

**The Estate of ALDWYN HINDS**

**ADANNA HINDS**

**NIGEL HINDS**

Defendants

**Appearances:**

**Claimant:** Colvin Blaize instructed by Kathy-Ann Joseph

**1st, 3<sup>rd</sup> & 4th Defendants:** Karen E.M. Gonzales

**Before the Honourable Mr. Justice Devindra Rampersad**

**Date of delivery:** July 5, 2023

**RULING**

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## Introduction

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1. By the amended notice of application filed on 8 February 2023, the first, third and fourth defendants seek to strike out the fixed date claim form and amended statement of case on the following grounds:
  - 1.1. The provisions of the CPR do not provide for a party to litigation to be constituted “the Estate of Aldwyn Hinds” and as such the claim against the purported second defendant should be struck out;
  - 1.2. Particulars of fraud have not been pleaded in respect of the last Will and Testament of Lynette Gemma Critchlow and that aspect of the claim should be struck out;
  - 1.3. CPR Part 72 and specifically 72.2 (2) provides that proceedings must be endorsed with a statement of the nature of the interest of the claimant. The claimant, as the administrator ad litem of the estate of Alfred Kinsale has not established a nature of his interest in the estate of Lynette Critchlow and/or that he has no interest in the estate of Lynette Critchlow;
  - 1.4. The proceedings are an abuse of the process of the court since these matters raised in this claim could have been raised in CV 2021 – 00709 Delma Henry (the personal representative of Lynette Gemma Critchlow deceased), Aldwyn Hinds, Adanna Hinds, Nigel Hinds vs. Mervyn Springer also called Roger Springer filed on 23 February 2021 which is before another court since both proceedings relate to the same property on several of the same issues raised in the instant claim are already before that court in those previous proceedings.
2. The parties have filed written submissions and have relied upon the same.

## The Estate of Aldwyn Hinds

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3. The claimant submitted that Aldwyn Hinds was one of the main beneficiaries of the will of Lynette Gemma Critchlow dated 17 May 2002. However, he passed away on 2 June 2022 before this matter concerning the disputed property could be settled. As a result, his estate would have an interest in the disputed property that would have passed on his death and so the second defendant was sued as “the Estate of Aldwyn Hinds” until a representative would be made known to represent the estate or the court appointed someone to represent the estate pursuant to rule 21.7 of the CPR.
4. The claimant relied upon the decision in *Jackson v Seurajh & Or*<sup>1</sup> as did the first, third and fourth named defendants. The latter also relied upon the case of *Neesha Rooplal Goberdhan v Sookchan Harrilal and Motor One Insurance; Paul Rooplal v Sookchan Harrilal and Motor One Insurance Company Limited*<sup>2</sup>. This court referred to the *Jackson* case in its decision in *Paul Sankar & Ors vs. Veronica Nanan & Or*<sup>3</sup>.
5. Using the reasoning in *Sankar*, the court is of the respectful view that in a case where there is no known will of the deceased, an application has to be made to appoint an administrator ad litem prior to the commencement of the proceedings. This is a grant of representation limited for the purpose of substantiating and carrying on the proceedings to properly represent the estate and enable the court to proceed in the cause<sup>4</sup>. Clearly, this procedure allows for the proper representation of the estate such as to bind it and also to allow the beneficiaries of the estate to be aware of the ongoing proceedings. As it stands, the proceedings have not been served on “the Estate of Aldwyn Hinds” so that the beneficiaries thereof are unaware, officially, of any steps being taken to impact upon the estate as a whole and, in particular, the subject of the proceedings.

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<sup>1</sup> CV 2012 – 05167 per Rahim J

<sup>2</sup> CV2010-02374, CV2010-02 per Pemberton J

<sup>3</sup> CV 2013 – 04516

<sup>4</sup> *Williams & Mortimer, Executors Administrators and Probate* at pages 980 and 981

6. The use of Part 21.7, in this court's respectful view, is only appropriate where there are *already subsisting* proceedings, hence the use of the words "*Where in any proceedings it appears that a dead person was interested in **the** proceedings...*"<sup>5</sup>. A person who dies prior to the commencement of proceedings cannot be interested in **the** particular proceedings which were commenced after his/her passing. In other words, there cannot be any qualifying interest by the deceased in something which did not exist *inter vivos*. Clearly, Part 21.7 is inappropriate
7. In this court's respectful view, the litigation commenced against "the Estate of Aldwyn Hinds" is not only impermissible and impractical but is also a nullity.
8. As a result, the purported claim against "the Estate of Aldwyn Hinds" is struck out.

### **The Plea of Fraud**

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9. Part 72 of the CPR deals with contentious probate proceedings. "Probate proceedings" is defined<sup>6</sup> as:

*"... proceedings for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being proceedings which is non-contentious or common form probate business; and "will" includes a codicil."*
10. Part 72.2 (2) requires the claim form to be indorsed with a statement of the nature of the interest of the claimant and of the defendant in the estate of the deceased to which the proceedings relates.
11. Part 72.8 defines the requirements of a statement of case:

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<sup>5</sup> Part 21.7 (1):

*"Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead person has no personal representatives, the court may make an order appointing someone to represent his estate for the purpose of the proceedings."*

<sup>6</sup> Part 72.1 (2)

*“(3) Any party who pleads that at the time when a will, the subject of the proceedings, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say:*

*(a) that the will was not duly executed;*

*(b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; or*

*(c) that the execution of the will was obtained by undue influence or fraud,*

*Must be made by that party unless that other plea is also set out in his statement of case.*

12. Black's Law Dictionary defines “fraud” as any activity that relies on deception in order to achieve a gain. No doubt, it involves a deliberate or intentional use of misrepresentation, deception or dishonesty to deprive, in order to make a gain or achieve an advantage. Lord Cairns, in **Fulton v Andrew**<sup>7</sup>, noted:

*“It is very difficult to define the various grades or shades of fraud”.*

13. Nevertheless, the common thread is the act of deception, dishonesty or deceit, some sort of trickery, to achieve a gain to the perpetrator or a loss to the victim or both. It is trite law that fraud must be perpetrated on another person.
14. The court bears in mind the inherent improbability that the court has to take into account when dealing with the issue of fraud, the burden of proof lying on the claimant in this case to prove the same.
15. The parties have relied on **Bullen and Leake and Jacobs Precedents of Pleadings**<sup>8</sup> which states:-

*“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings...”*

And:-

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<sup>7</sup> (1875) LR 7 HL 448

<sup>8</sup> Sweet and Maxwell – 13<sup>th</sup> Edn, 427

*““The statement of claim must contain precise and full allegations of acts and circumstances leading to reasonable inference that the fraud was the cause of the loss complained of”*

16. The claimant also relied on ***Three Rivers District Council v Governor and Company of the Bank of England***<sup>9</sup> to establish the legal requirements for the plea of fraud:

*“184. It is well established that fraud or dishonesty (and the same must go for the present tort) must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence: see Kerr on Fraud and Mistake 7th ed (1952), p 644; Davy v Garrett (1878) 7 Ch D 473, 489; Bullivant v Attorney General for Victoria [1901] AC 196; Armitage v Nurse [1998] Ch 241, 256. This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so.*

*185. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means "dishonestly" or "fraudulently", it may not be enough to say "wilfully" or "recklessly". Such language is equivocal.*

*186. The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts,*

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<sup>9</sup> [2001] UKHL 16

*this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud.*

***It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.”***

*[Emphasis added]*

17. The claimant relied on the pleas at paragraphs 5, 6 and 7 of the amended statement of case to suggest that the need to particularize the fraud had been satisfied. The court will look at these paragraphs relied upon.

#### Paragraph 5

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*“5. The said 2002 will presented for probate comprises three (3) pages. The first two pages contain the alleged content and dispositions of the 2002 will. The signature of Lynette Crichlow does not appear at the foot or at the end of the first two pages. The first two pages were neither signed nor and did not contain the mark of Lynette Crichlow. Instead the signature of Lynette Crichlow appears only on a third separate page of the 2002 will along with the attestation clause, separated entirely from the contents of the will on the first two pages.”*

18. The allegations of the signatures being on a different page from the rest of the body of the will does not go far enough to suggest any deliberate attempt to be dishonest. To my mind, this plea at paragraph 5 does not particularize any act of fraud sufficient for the defendants to know the case they have to meet.

## Paragraph 6

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*“6. The Claimant will contend that the 2002 will is invalid as it was not executed in accordance with the provisions and/or requirements of the Wills and Probate Act Chap 9:03 in that the signatures of the testator Lynette Crichlow and the 2 attesting witnesses are on a separate page containing no part of the will and therefore the 2002 will should not be deemed to have any validity for any purpose whatsoever.and/or*

*6 (a) It is not the will of the Deceased Lynette Crichlow referred to in the affidavit of the attesting witness Sharon Wong-Hinds , who made reference in her affidavit to a will comprising two pages with the signature of the deceased at the foot of the second page of the will. A copy of the said affidavit is hereto annexed and marked “D”*

19. Again, in this court’s respectful view, there is no specific averment in relation to deceit or dishonesty and therefore this plea in paragraph six does not sufficiently particularize any act of fraud.

## Paragraph 7

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*“7. Alternatively, if, which is denied, the will was duly executed the Claimant will contend that at the time when the 2002 will, was alleged to have been executed the testator did not know and approve of its contents and/or at the time of execution of the will the testator was not of sound mind, memory and understanding; and/or the execution of the will was obtained by undue influence or fraud. The Claimant is making his claim on behalf of the estate of Alfred Kinsale who, as the cohabitant of Lynette Crichlow, is beneficially entitled to the Estate of Lynette Crichlow on Intestacy.*

*7 v. Sometime in or about 5 months before Lynette’s death, in secrecy and unknown to Alfred or any of his family, including the Claimant, the*

*1<sup>st</sup> Defendant, with the assistance of staff members at the office of an Attorney at law, purportedly prepared and had executed the 2002 will.*

*7 w. The party or parties used to prepare the will were chosen by the 1<sup>st</sup> Defendant, and were parties who were not previously known to the Deceased Lynette Crichlow; it was the 1st Defendant who would have conveyed the instructions to the staff at the Attorney's office, where the will was prepared; and it was the 1st Defendant who arranged for the testator to sign the last page of the purported 2002 will;*

*7 w(1) The Claimant will contend that the 1st Defendant arranged with the 2nd, 3rd and 4th Defendant to have their names placed on the will as beneficiaries of the Tragarete Road property, and to thereafter purchase the said property from them at an agreed price, after they obtained the said Deed of Assent. To date, despite the fact that the 1st Defendant has purportedly assented the Tragarete Road property to the 2nd, 3rd, and 4th Defendant, which the Claimant has alleged is null and void in that the property did not form part of the estate of Lynette Crichlow, the 1st Defendant, without any locus in the matter, is still trying to obtain a new lease to the said property.*

*x. The weak physical and mental condition of the Deceased, her vulnerability and the influence of the 1st Defendant prior to and at the time of the execution of the will rendered the Deceased Lynette Crichlow susceptible to undue influence, which was in fact exercised;"*

20. Paragraph 7 w (1) hints at some sort of deceit but does not go far enough to fully particularize the nature of that deceit and how the preparer of the document is in any way implicated. Neither do any of the other subparagraphs quoted above.

### Conclusion

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21. The court is not convinced that the fraud alleged by the claimant has been properly particularized as per the authorities referred to above. As a result, the defendants would not be in a position to know the case that they have to meet

in that regard as the pleas, as they are currently couched, calls for inferences as to fraud rather than particular instances thereof.

22. In the circumstances, without more, the plea of “fraud” is struck out.

### **The Nature of the Case – Part 72.2 (2)**

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23. As mentioned above, the claim form is required to be indorsed with a statement of the nature of the interest of the claimant and of the defendant in the estate of the deceased.
24. The amended fixed date claim form has no such indorsement. All it says is that the claimant is the Administrator Ad Litem of the estate of Alfred Kinsale and brings the claim against the defendants to set aside the purported will of Lynette Gemma Critchlow dated 17 May 2002 and the consequential grant of probate in that regard. This is clearly in contravention of the rule.
25. Crucially as well, there is no order made by a competent court under the Cohabital Relationships Act Chapter 45:55. Applications for adjustment orders in relation to property under that Act are investigated by the court, quite often with the assistance of the Chief State Solicitor or Solicitor General whose representative would conduct a field investigation to assist the court with a report of discussions had with persons in the neighbourhood and other witnesses to the alleged relationship. It is a specific process designated by Parliament for the application of a statutory relief in relation to a relationship which would otherwise not have been recognised in law. Without accessing and processing that procedure, this court cannot take account of any such relationship based on cohabitation.
26. The said Lynette Critchlow died on 6 October 2002. Alfred Kinsale died on 3 March 2019 – more than sixteen years later. Probate of the purported will was granted on 2 May 2003 – during the lifetime of Alfred Kinsale. Yet, he made no application for a property adjustment order during his lifetime nor did he make any application to set aside the purported will and, even after his death in

2019, no application for an adjustment order under the Cohabitation Relationship Act has been made as far as the court is aware.

27. With respect to the alleged contributions to the upkeep and upgrade of the property, no particulars of the same were set out in the amended statement of case. It is clear that the court has the jurisdiction under its case management powers to order such particulars - see *Real Time Systems Limited vs. Renraw Investments Limited*<sup>10</sup>. However, no declaration was sought in relation to Alfred Kinsale having any equitable interest in the property based on promissory or proprietary estoppel and, importantly, he himself never sought such relief during his lifetime.
28. Consequently, the court is of the respectful view that the claimant has not established any valid legal or beneficial interest in Lynette Critchlow's estate.

### **Abuse of Process**

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29. With respect to this aspect of the objection, the court has not seen the other proceedings to come to a definitive view on it. Needless to say, the claimant has said that he was not empowered to have brought this action at the time when those proceedings were brought against him for trespass. In any event, the court is of the respectful view that the issues involved in a contentious probate action are themselves quite complicated and engaged and therefore it may well be legitimately desirable to keep the two separate.

### **The Proposed Amendment**

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30. Reference was made in the claimant's submissions to an oral application made at the first CMC for the amendment of the statement of case. Of course, such an oral application does not meet the requirements of Part 20.1 having regard

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<sup>10</sup> [2014] UKPC 6

to the authorities on the point. Should the court be asked to give permission, it is imperative that a draft of what is being sought be provided to the court along with evidence to meet the requirements necessary to satisfy the elements of the court's exercise of its discretion.

31. In those circumstances, the court does not agree with the suggestion made by attorney-at-law for the claimant there is still some pending oral application for an amendment. If an amendment is required, then an appropriate application in writing ought to be, or to have been, filed setting out the matters which the court must consider as discussed by the Court of Appeal in ***Estate Management and Business Development Company Limited v Saiscon Limited***<sup>11</sup> and by this court in ***Chantal Rigaud vs. Anthony Lambert***<sup>12</sup>.
32. Before moving on from this point, the court needs to point out that these proceedings were filed by fixed date claim form and statement of case on 29 September 2022. An appearance was filed on 14 October 2022 which was followed by an application on 14 December 2022 to extend the time for the filing and service of the defence.
33. The matter first came up before this court on the first case management conference on 2 February 2023. The day before that, on 1 February 2023, the claimant filed an amended fixed date claim form and statement of case. Prior to that, the defendant had filed an application to strike out the claim on 31 January 2023. At the hearing on 2 February 2023, Ms. Gonzales pressed for the application to be dealt with and the court indicated:

*“Having regard to the overriding objective and the duty of the parties to cooperate with each other, the court is minded to adjourn the first CMC as the first CMC in light of the amended fixed date claim form and amended statement of case that was filed on 1 February 2023 and the application was filed on 31 January 2023 to strike out the claim on the grounds set out therein and for the parties to have a conversation as to how matter is to proceed that is whether the application will be amended now or whether the application as it stands is properly before the court and whether or not the*

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<sup>11</sup> Civil Appeal No. P 104 of 2016, paragraph 7 and 10

<sup>12</sup> CV 2015 – 01091

*parties need to speak about time frames for the defence which now is due at the end of February or thereabouts. So, I will let the parties try to resolve the issue and, if they are not able to resolve that, then I will get involved but I do not think that the court's time and resources has to be involved and get involved in organizing these procedural matters. If there are unresolved issues then I will definitely deal with it whether by way of submissions in writing but for now I think that the parties are very experienced on both sides and I think they can speak to each other and figure a way forward with respect to the application and the timeframe for the defence.*

*Permission is granted to the first 3rd and 4th defendants to withdraw the notice of application filed on 14 December 2022 was no order as to costs.*

*The notice of application filed on 31 January 2023 and the first CMC as the first CMC is adjourned to 10 March 2023 at 10 AM by Virtual Hearing **for the parties to have the conversation referred to by the court this morning in relation to how this matter is to progress.** The court directs the parties to notify the court by email of an agreed course of conduct to progress this matter by 10 February 2023."*

*[Emphasis added]*

34. This court was not so notified on 10 February as directed. Instead, Ms. Gonzales wrote on 10 February to say that proposals were made to the other side as to the way forward and no response was received regarding the same.
35. Nothing further happened until the defence and counterclaim was filed on 28 February 2023.
36. The adjourned first CMC came up for hearing on 10 March 2023. At that hearing, there was no application for the adjournment of the matter nor was there a written application for the amendment of any of the pleadings. Ms. Gonzales indicated that up to that date, the parties had not spoken and she had not yet heard from Mr. Blaize.
37. Mr. Blaize then indicated that his friend had filed an application with an affidavit and he had filed an affidavit in response. He said that he believed that this was the first case management conference and in the defence, a document was exhibited which revealed for the first time that a lease has been gifted to the estate of Lynette Crichlow. This is something that was crucial and he was thinking that an amendment should be made since that allegation in

relation to the lease should be part of the statement of case rather than part of the defence to the counterclaim.

38. The defence and counterclaim was served on 28 February.
39. The court indicated that that was something that what to have been raised with the other side so that the parties did not have to attend just for the first CMC to be adjourned. The court pointed out that had that been done, as per the court's directions on the last occasion when the matter came up with the direction that the parties were to speak about the progress of the matter, then the claimant could have filed his application for the amendment and directions could have been given otherwise.
40. Mr. Blaize was asked what he wanted – did he want the first CMC to be adjourned so that he could look at the documents to make the amendment? He said that an amendment should be addressed in light of the lease document.
41. It is important to note that there was no mention of a proposed change of tack to forego the challenge to the will and instead go for accounts. All that was mentioned was that there was a crucial aspect of the case that had to be addressed in relation to the lease.
42. Directions were then given for submissions to be filed in relation to the defendant's application.
43. After the directions were given, Mr. Blaize asked the question whether or not permission would be given to amend and the court said that it would see what was happening with the application because the application as it stood was one to strike out the claim. The court did suggest, however, that the application could be filed along with the draft amendment to the statement of case. Mr. Blaize also spoke about the need for a reply and defence to counterclaim to be filed and the court suggested that time should not be spent on that aspect and any *such* further document should await the outcome of the application. The court specifically said thereafter that the proceedings were stayed against further pleadings being filed ***to preserve the time for the***

***filing of the reply and defence to counterclaim. No mention was made prohibiting an application for the filing of an amendment.***

44. Further pleadings in the matter were therefore stayed to await the outcome of the application. Mr. Blaize expressed concern about the premature nature of the application as he felt that the documents that were disclosed were pivotal to the matter. He did not go into detail about why he thought so but he thought that the statement of case ought to be amended before the application was dealt with and the cause of the proposed amendment was the information about the lease disclosed in the defence.
45. The court did not adopt that course having regard to the history of the matters set out above and the fact that the court had directed the parties to have the conversation and they did not, along with the fact that the defendants' attorney-at-law was pressing the court to proceed with the application that was adjourned at the hearing on 3 February for the parties to come to an agreed position as to the way forward.
46. Consequently, the court is of the firm view that there is no pending application for an amendment even though the court suggested at the hearing on 10 March that one could have been filed prior to that hearing and also suggested that one could have been filed even after the hearing, restricting the stay to further pleadings arising after the defence and counterclaim.

## **Conclusion**

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47. The court is of the respectful view that the claim, as brought by the claimant, has not established any proper interest such as to raise a legitimate concern to the purported will of the deceased which was admitted to probate since 2003 – twenty years ago. As a result, apart from the striking out of the claim as against “the estate of Aldwyn Hinds”, the court is of the respectful view that the claim itself lacks proper locus standi.

48. The court therefore strikes out the claim for the reasons given and the claimant shall pay the costs of the claim and the amended notice of application to be quantified by the court in default of agreement.
49. The court directs the parties to notify it by email copied to the other side by Friday, 14 July 2023 whether the issue of costs has been agreed and if not the court directs the parties to forward their respective notes on costs to the court by email by 28 July 2023 following which the court will give its decision in chambers and notify the parties of that decision by 5 September 2023.

### **Post script**

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50. At the hearing of this matter, when this decision was first given orally with the court indicating that it had a written decision in this regard, counsel for the claimant interjected in the court's delivery to raise a wholly different approach for the first time. Speaking about the proposed amendment, and mentioning the lease issue without specifics, counsel then said that the proposed amendment would now alter the case from contentious probate proceedings under Part 72 to an administration action under Part 71. In essence, therefore, the claimant seemed to be willing to abandon the challenge to the will which took up all of the amended statement of case by way of pleading. What this would therefore mean is that the claimant was ready to jettison all he said in his amended statement of case and buttressed in the submissions about the impropriety of the will making process and certified to be true and, instead, call upon the first, third and fourth defendants for an account under the estate. In other words, the will would be accepted and the claim would change radically.
51. Having considered that position, the court indicated that it would not be minded to consider any such application at this stage since the entire change of the case would not be consistent with what was proposed to be done and the striking out of almost the entirety of the amended statement of case to now seek an account of the administration of the estate would not only make

the pleadings cumbersome but would not create any economy in time or resources nor would it further the overriding objective.

52. In any event, the court ascertained that no pre-action protocol in that regard had been sent out to these defendants and this entire change of tactic may possibly result in a less contentious administration action in which the first defendant could fulfill her statutory obligation to file accounts under the provisions of the Wills and Probate Act without the necessity of litigation. If there was to be any surcharge or falsification of the accounts in that regard, then that alone would be the subject of any future litigation, if necessary. Consequently, the court refused the claimant's proposed course of action i.e. the requested adjournment and permission to file an application to amend, and informed the claimant that the new administration action could be filed after the pre-action protocol had been complied with.

/s/ D. Rampersad J.