



**[2025] JMSC Civ 111**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. SU 2023 CV 00119**

**IN THE ESTATE** of Conrad Etwal Campbell  
also known as Conrad E. Campbell also known  
as Conrad Campbell late of 385 Hudson  
Avenue, Ironshore, in the parish of St. James,  
Retired Building Contractor, deceased,  
intestate

**A N D**

**IN THE MATTER** of ALL THAT PARCEL OF  
LAND part of Ironshore and Hartfield Estates  
situate near Montego Bay in the parish of Saint  
James being Lot numbered 385 registered at  
Volume 1074 Folio 457 of the Register Book of  
Titles

**BETWEEN                      CARLTON EDWARD CAMPBELL                      CLAIMANT**

**AND                              JACQUELINE WILLACY                      DEFENDANT**

**IN CHAMBERS**

**Mrs Abi-Gaye White-Thomas instructed by Balcostics Law for the Claimant**

**Messrs. Duane O. Thomas and Javed Grant for the Defendant**

**Heard: 14, 15 and 25 October 2024 and 18 September 2025**

**Land – Fraud – Forgery – Whether the signature of the deceased was forged – Burden of proof – Standard of proof – Expert evidence – The approach of the court when considered conflicting expert evidence – The Forgery Act, section 3 – The Registration of Titles Act – Sections 68, 70, 71 and 161 – The Civil Procedure Rules, 2002, as amended, rule 8.1(3), 8.1(4), 8.8(3), 8.8(4), 8.9, 32.13**

## **A. NEMBHARD J**

### **INTRODUCTION**

- [1] For many years, Mr Conrad Campbell was the sole proprietor of land located at Ironshore and Hartfield Estates being Lot 385 Hudson Avenue, in the parish of Saint James, being the land comprised in Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles (“the subject property”). Mr Conrad Campbell had many children, including the Claimant, Mr Carlton Campbell and the Defendant, Mrs Jacqueline Willacy.
- [2] Shortly before his death in 2017, it is alleged that Mr Conrad Campbell re-lodged an application to transfer interest in the subject property to Mrs Willacy by way of gift, naming her as a joint tenant. This application, supported by other documentation, was lodged at the Office of Titles for the National Land Agency (“the NLA”) and purportedly bears the handwritten signatures of Mr Conrad Campbell. This application is registered as Transfer No. 1878775 on the Duplicate Certificate of Title for the subject property.<sup>1</sup>
- [3] Mr Carlton Campbell questions the authenticity of the purported signatures as he contends that the signatures are forgeries. Specifically, Mr Carlton Campbell asserts that the Instrument of Transfer and other documentation addressed to

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<sup>1</sup> See – Exhibit “C”, which contains a copy of the Duplicate Certificate of Title for the subject property registered at Volume 1074 and Folio 457 of the Register Book of Titles, which was attached to the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

the NLA were fraudulently signed by someone other than his late father. The Claimant also alleges that his father died intestate but during his lifetime, always maintained that the subject property would devolve to all his children. Mr Carlton Campbell asserts that his sister, Mrs Willacy, was aided and assisted by others to fraudulently sign letters and other documents to effect the questioned transfer of interest in the subject property.

- [4] Conversely, Mrs Willacy staunchly and vehemently denies the allegations of fraud levied against her by the Claimant. She contends that their father died testate and left all his real and personal property to her in his Last Will and Testament. Further, Mrs Willacy contends that she and her father enjoyed a close relationship and that her father transferred the title for the subject property to their joint names because of this.

### **The Claim**

- [5] By way of a Fixed Date Claim Form, which was filed on 18 January 2023, Mr Carlton Campbell seeks the following relief: -

1. A declaration that the Estate of Conrad Etwal Campbell also known as Conrad E. Campbell also known as Conrad Campbell is the absolute owner of all that parcel of land part of Ironshore and Hartfield Estates situate near Montego Bay, in the parish of Saint James, being Lot numbered Three Hundred and Eighty-Five registered at Volume 1074 Folio 457 of the Register Book of Titles.
2. A declaration that the transfer of the said land by the deceased to the Defendant was a forgery and was known by the Defendant to be a forgery.
3. An order that Transfer Instrument #1878775 dated the 3<sup>rd</sup> day of March 2017, concerning land registered at Volume 1074 Folio 457 be rescinded

and that absolute ownership of the land be restored to Conrad E. Campbell.

4. That the Defendant is to deliver the Duplicate Certificate of Title registered at Volume 1074 Folio 457 in the Register Book of Titles with survey plan attached to the Registrar of the Supreme Court within fourteen (14) days of the Order. The Registrar of the Supreme Court is to transmit said Duplicate Certificate of Title with survey plan attached to the Registrar of Titles within seven (7) days of receipt thereof.
5. That the Registrar of Titles cancel the Transfer Instrument #1878775 dated the 3<sup>rd</sup> day of March 2017 endorsed on the said Certificate of Title registered at Volume 1074 Folio 457 by which all that parcel of land part of Ironshore and Hartfield Estates situate near Montego Bay in the parish of Saint James being Lot numbered Three Hundred and Eighty-Five.
6. In the event that the Defendant fails to deliver the aforementioned Duplicate Certificate of Title with survey plan attached within the prescribed time, the Registrar of the Supreme Court must forthwith so inform the Registrar of Titles, and the Registrar of Titles must cancel the Certificate of Title and replace it by issuing a new Certificate of Title in the name of Conrad E. Campbell.
7. Such further and other relief as this Honourable Court deems just.

**[6]** The Fixed Date Claim Form is supported by the Affidavit of Carlton Edward Campbell, which was also filed on 18 January 2023.

## **THE ISSUES**

**[7]** The salient issue, which is raised by the Fixed Date Claim Form, which was filed on 18 January 2023, for the Court's determination may be distilled as follows: -

- i. Whether the Claimant, Mr Carlton Campbell, has, on a balance of probabilities, proved that the Defendant forged or was aided or assisted to forge the signature of the now deceased and/or committed fraud.

**[8]** In seeking to determine this central issue, the following sub-issues must also be resolved: -

- a. Whether a claim grounded in fraud can properly be initiated by way of a Fixed Date Claim Form.
- b. Whether the Claimant, Mr Carlton Campbell, has specifically pleaded and sufficiently particularized fraud.
- c. Whether the Claimant, Mr Carlton Campbell, has proven on a preponderance of the evidence that the Defendant, Mrs Jacqueline Willacy, committed fraud.

## **THE DECISION OF THE COURT**

**[9]** On a preponderance of the evidence the Court finds that:

- i. the findings contained in the Expert Report of Ms Beverley East strongly supports the case of the Claimant, Mr Carlton Campbell, that the signatures on the documents which were submitted to the NLA and those on the Last Will and Testament of Mr Conrad Campbell, are forgeries. These documents, though purported to

have been signed by Mr Conrad Campbell, do not bear his authentic signature.

- ii. actual fraud occurred with the execution of the Transfer Instrument by someone other than Mr Conrad Campbell.
- iii. the documents which the Defendant, Mrs Jacqueline Willacy, submitted to the NLA or caused to be submitted to the NLA, bore the signature of the sole proprietor of the subject property (the now deceased, Mr Conrad Campbell), which was forged to make it appear as similar as possible to that of the now deceased, Mr Conrad Campbell.
- iv. the Defendant, Mrs Jacqueline Willacy, derived her interest from a transfer by way of gift and ought not to be considered as a bona fide transferee for value.
- v. the Defendant, Mrs Jacqueline Willacy, cannot rely on the defence that the fraudulent circumstances resulting in her registration on the Certificate of Title in respect of the subject property were not known to her.
- vi. the Transfer Instrument No. 1878775, which is dated 3 March 2017, concerning the subject property, is fraudulent.
- vii. the transfer of the ownership of the subject property by the now deceased, Conrad Etwal Campbell, also known as Conrad E. Campbell, also known as Conrad Campbell, to the Defendant, Jacqueline Willacy, was fraudulent and was known by the Defendant, Jacqueline Willacy, to be fraudulent.

## THE BACKGROUND

### The factual substratum

- [10] On 9 November 1990, Mr Conrad Campbell and his wife, Mrs Rosena Campbell were registered as joint tenants of the subject property.<sup>2</sup> Mr Conrad Campbell had many children, including the Claimant, Mr Carlton Campbell and the Defendant, Mrs Jacqueline Willacy.
- [11] On 19 January 2004, Mrs Campbell, by way of gift, conveyed her interest in the subject property to Mr Conrad Campbell making him the sole proprietor.<sup>3</sup> Mr Conrad Campbell died on or around 26 February 2017.<sup>4</sup>

### The case advanced by the Claimant

- [12] It is the case of the Claimant, Mr Carlton Campbell, that his father died intestate<sup>5</sup> but had always maintained during his lifetime that upon his death, the subject property would devolve to all of his children.<sup>6</sup> In or around October and November 2019, Mr Carlton Campbell asserts that he, along with another sister, Ms Nola Campbell,<sup>7</sup> retained legal representation to obtain Letters of Administration in their late father's estate. Their Attorneys-at-Law and Mrs

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<sup>2</sup> See – Transfer No. 641182 noted on the Duplicate Certificate of Title for the subject property registered at Volume 1074 and Folio 457 of the Register Book of Titles, which was attached to the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

<sup>3</sup> See – Transfer No. 1276163 noted on the Duplicate Certificate of Title for the subject property registered at Volume 1074 and Folio 457 of the Register Book of Titles, which was attached to the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

<sup>4</sup> See – Exhibit “CEC2”, which contains a copy of the Death Certificate of Mr Conrad Campbell, attached to the Affidavit of Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023.

<sup>5</sup> See – Paragraph 3 of the Affidavit of Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023.

<sup>6</sup> See – Paragraph 9 of the Affidavit of Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023. See also, paragraph 16 of the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

<sup>7</sup> See – Paragraphs 6 – 9 of the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

Jacqueline Willacy briefly corresponded via letters in this regard.<sup>8 9</sup> As a result of these correspondences, the Attorneys provided Mr Carlton Campbell and his sister, Mrs Jacqueline Willacy, with copies of the documents which were lodged with the NLA and a copy of the Duplicate Certificate of Title which showed that the subject property had been transferred to Mrs Jacqueline Willacy.

**[13]** Having reviewed these impugned documents, Mr Carlton Campbell contends that he observed that the signature on the documents appeared different from how he recalled his father signing other documents.<sup>10</sup> Mr Carlton Campbell asserts that he observed that the purported signatures of Mr Rudolph Parkinson, Justice of the Peace, appear on the impugned documents which were alleged to have been signed by his father.<sup>11</sup> The impugned documents, Mr Carlton Campbell asserts, were all lodged by Ms Valda Smith-Ferguson,<sup>12</sup> at both the NLA and the Tax Administration of Jamaica (“TAJ”).<sup>13</sup>

**[14]** Mr Carlton Campbell also observed that the Instrument of Transfer was re-lodged at the NLA on 3 March 2017, five (5) days after the death of Mr Conrad Campbell.<sup>14</sup> Consequently, Mr Carlton Campbell, through his Attorney-at-Law, Mrs White-Thomas, sought and obtained the services of Ms Beverly East, a forensic document examiner, to examine and determine the authenticity of the

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<sup>8</sup> See – Exhibit “CEC4”, which contains a copy of a letter dated 14 October 2019 and addressed to Mrs Jacqueline Willacy, regarding the estate of Mr Conrad Etwal Campbell and bearing the signature of Ms Veronica T. Morris, Attorney-at-Law of the firm, Ho Lyn, Ho Lyn & Morris, attached to the Affidavit of Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023. See also, Exhibit “D”, which contains a copy of the same letter and is attached to the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

<sup>9</sup> See – Exhibit “CC-1”, which contains a letter dated 4 November 2019, purportedly signed by Ms Jacqueline Willacy and addressed to the firm of Ho Lyn, Ho Lyn & Morris, attached to the Further Affidavit of Carlton Edward Campbell, which was filed on 30 August 2023. See also, Exhibit “E”, which contains a copy of the same letter and is attached to the Witness Statement of Carlton Edward Campbell, which was filed on 9 October 2024.

<sup>10</sup> See – Paragraph 11 of the Affidavit of Mr Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023.

<sup>11</sup> See – Exhibit “CC-4”, which contains a copy of the Death Certificate of Mr Rudolph Parkinson, which is attached to the Further Affidavit of Carlton Edward Campbell, which was filed on 30 August 2023.

<sup>12</sup> See – Exhibit “CC-3”, which contains a copy of the Death Certificate of Ms Valda Smith-Ferguson, which is attached to the Further Affidavit of Carlton Edward Campbell, which was filed on 30 August 2023.

<sup>13</sup> See – Paragraphs 7 - 9 of the Further Affidavit of Carlton Edward Campbell, which was filed on 30 August 2023.

<sup>14</sup> See – Paragraph 10 of the Further Affidavit of Carlton Edward Campbell, which was filed on 30 August 2023.



purported signatures of his late father on the Instrument of Transfer, letters and other documentation.<sup>15</sup> In her Expert Report, which is dated 29 November 2022 and entitled “Re: Authenticity of Conrad Campbell’s Signature”, Ms East opined that the questioned signatures are not those of Mr Conrad Campbell.<sup>16</sup>

- [15] In light of these findings, Mr Carlton Campbell asserts that the letter dated 20 February 2017 addressed to the Office of Titles for the NLA bearing reference number: 1878775, along with eleven (11) enclosures, and the Instrument of Transfer which was re-lodged with the NLA on 3 March 2017, in relation to the subject property, were fraudulently signed by someone else, other than Mr Conrad Campbell, his late father.<sup>17</sup> Specifically, Mr Carlton Campbell alleges that Mrs Jacqueline Willacy, aided and assisted by persons who are now deceased, fraudulently signed the letters and the Instrument of Transfer purporting to be Mr Conrad Campbell and sought to have same lodged at the NLA for transfer.<sup>18</sup>

### **The case advanced by the Defendant**

- [16] Conversely, Mrs Jacqueline Willacy categorically denies the allegations levied against her by her brother, Mr Carlton Campbell. Mrs Jacqueline Willacy asserts that in the years preceding her father’s death, she was his primary caregiver, conducting his business and paying his bills, among other things. She further contends that they enjoyed a very close relationship as she was deeply involved in his day-to-day care, up to the time of his passing.<sup>19</sup>

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<sup>15</sup> See – Paragraph 12 of the Affidavit of Carlton Edward Campbell in Support of Fixed Date Claim Form, which was filed on 18 January 2023.

<sup>16</sup> See – Exhibit “CEC5”, which contains the Report on the Authenticity of Conrad Campbell’s Signature, dated 29 November 2022, prepared by Ms Beverly Y. East, Certified Forensic Document Examiner.

<sup>17</sup> See – Exhibit “CEC3”, which contains the letter dated 20 February 2017 and the enclosures as well as the Instrument of Transfer which were lodged at the National Land Agency and which have been called into question by the Claimant, Mr Carlton Campbell.

<sup>18</sup> See – Paragraph 6 of the Affidavit of Carlton Edward Campbell in support of Fixed Date Claim Form, which was 18 January 2023.

<sup>19</sup> See – Paragraphs 5 and 6 of the Affidavit of Jacqueline Willacy, which was filed on 7 July 2023.

- [17] Mrs Jacqueline Willacy asserts that her father died testate<sup>20</sup> and that the subject property was her father's sole remaining asset. She also asserts that as far as she is aware, Mr Conrad Campbell voluntarily signed the documents required to add her name to the Certificate of Title for the subject property. Consequently, she relies on three (3) Expert Reports which were prepared by Mr Robert Lesnevich, Certified Forensic Document Examiner, and dated 2 August 2023,<sup>21</sup> 14 September 2023<sup>22</sup> and 8 February 2024,<sup>23</sup> respectively, in this regard.
- [18] Mrs Jacqueline Willacy denies the assertion that she was involved in or was aided and assisted by other persons in the commission of any fraudulent act or activity involving the transfer of the subject property. Mrs Jacqueline Willacy also denies the allegations that she conspired with any Justices of the Peace to effect the transfer of the subject property.<sup>24</sup>
- [19] Finally, Mrs Jacqueline Willacy asserts that because the subject property was transferred to her, she found that it was unnecessary to probate her father's Last Will and Testament after his death.<sup>25</sup>

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<sup>20</sup> See – Exhibit “JW1”, which contains a copy of the document alleged to be the Last Will and Testament of Mr Conrad Etwal Campbell, dated 5 May 2010.

<sup>21</sup> See – Exhibit “JW3”, which contains the expert report dated 2 August 2023, prepared by Mr Robert Lesnevich, which is attached to the Affidavit of Jacqueline Willacy in Support of Notice of Application for Court Orders to Appoint Expert Witness, which was filed on 5 June 2024.

<sup>22</sup> See – Exhibit “JW2”, which contains the expert report dated 14 September 2023, prepared by Mr Robert Lesnevich, which is attached to the Affidavit of Jacqueline Willacy in Support of Notice of Application for Court Orders to Appoint Expert Witness, which was filed on 5 June 2024.

<sup>23</sup> See – Exhibit “JW1”, which contains the expert report dated 8 February 2024, prepared by Mr Robert Lesnevich, which is attached to the Affidavit of Jacqueline Willacy in Support of Notice of Application for Court Orders to Appoint Expert Witness, which was filed on 5 June 2024.

<sup>24</sup> See – Paragraphs 7 – 9 of the Affidavit of Jacqueline Willacy, which was filed on 7 July 2023.

<sup>25</sup> See – Paragraph 4 of the Affidavit of Jacqueline Willacy, which was filed on 7 July 2023.

## THE LAW

### The relevant rules governing originating documents

[20] Rule 8.1(3) of the Civil Procedure Rules, 2002, as amended (“the CPR”), stipulates that a claim form<sup>26</sup> must be in Form 1 except in the circumstances set out in paragraph four (4). Paragraph four (4) reads as follows: -

*“8.1(4) Form 2 (fixed date claim form) must be used –*

*(a) in mortgage claims;*

*(b) in claims for possession of land;*

*(c) in hire purchase claims;*

*(d) where the claimant seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact;*

*(e) whenever its use is required by a rule or practice direction; and*

*(f) where by any enactment proceedings are required to be commenced by petition, originating summons or motion.”*

*(emphasis supplied)*

[21] Rule 8.8 of the CPR details the contents of fixed date claim forms generally as follows: -

*“8.8 Where the claimant uses form 2, the claim form must state –*

*(a) the question which the claimant wants the court to decide; or*

*(b) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;*

*(c) where the claim is being made under an enactment, what that enactment is;*

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<sup>26</sup> Rule 8.7(1)(a) and (b) of the CPR states that: “The claimant must in the claim form (other than a fixed date claim form) – (a) include a short description of the nature of the claim; (b) specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled).”

(d) ...

(e) *where the claimant*

*(i) is claiming in a representative capacity; or*

*(ii) sues a defendant in a representative capacity, what that capacity is.”*

**The appropriate originating document where fraud/forgery is the cause of action**

- [22] Rule 8.8(3) of the CPR makes it clear that claims must be commenced by way of a Claim Form, save and except the circumstances stipulated in rule 8.8(4) of the CPR. Further, there is no enactment that requires that proceedings grounded in fraud must be brought by way of a fixed date claim form. However, generally, fraud as a cause of action is likely to involve substantial disputes of fact and should therefore be initiated via a claim form (Form 1).

**The approach of the court in circumstances where proceedings are instituted using the incorrect procedure**

- [23] Master Hart-Hines (as she then was) in the authority of **Marlan Higgins (Executor of Estate of Egbert Higgins) v Geoffrey Johnson (sued as Junior Johnson)**,<sup>27</sup> opined on the propriety of commencing proceedings by way of a fixed date claim form, in circumstances where it ought to have been brought by way of a claim form. The learned Master is quoted as follows: -

*“[18] Rule 8.1(4)(b) of the Civil Procedure Rules states that the fixed date claim form “must be used... in claims for possession of land”. However, where the claim involves a dispute as regards whether or not the claimant is entitled to possession of the land in question, case law suggests that the proceedings ought properly to be commenced by way of claim form. If the proceedings are commenced by fixed date claim form, it may be ordered that the proceedings*

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<sup>27</sup> [2019] JMSC Civ 134

*continue as if begun by claim form, depending on the nature of the claim, and the fact that there may be significant disputes as to fact.*

[19] *The practice under the Civil Procedure Code was that the originating summons procedure was unsuitable in cases where there was likely to be a substantial dispute of fact. In **Melville and others v Melville** (1996) 52 WIR 335 at pages 339-340, Patterson JA said:*

*“The Rules of the Supreme Court in England provide for the continuation of proceedings begun by originating summons as if begun by writ in cases where it appears to the court at any stage of the proceedings that they should for any reason have been begun by writ. It is a very useful provision that was introduced in England for the first time in 1962. The Civil Procedure Code does not have such an express provision, but, by virtue of section 686, the procedure and practice that obtains in England is followed in the court below. Consequently, even where proceedings could not have been properly commenced by originating summons, the court below, in the exercise of its discretion, may order that the proceedings continue as if begun by writ instead of striking out the matter.”*

[20] ...

[21] *Guidance from the Court of Appeal indicates that the pre-CPR practice is still applicable. In **Georgia Pinnock v Lloyd Property Development Ltd and Ors** [2011] JMCA Civ 9, the claim involved the determination of the priority of interests in land, and Phillips JA said at paragraph 40 that the fixed date claim form is an inappropriate method to be adopted if the questions for the court’s decision are likely to involve a substantial dispute as to fact.*

[22] *The instant claim involves a dispute regarding whether or not the claimant is entitled to possession of the land in question, and the claim is therefore likely to involve a substantial dispute as to fact. The procedure following the issuance of claim form is most appropriate in a case such as this, where the nature of the dispute necessitates that there be a trial in open court. Despite the wording of*

*rule 8.1(4)(b), a court may exercise its discretion to convert the proceedings, based on the nature of the claim and the likely or apparent disputes as to fact. It would therefore have been appropriate for a judge, pursuant to his/her judicial case management powers, to make an order converting these proceedings to claim form proceedings. However, such an order was not made in this case, and it was not open to the claimant to file and serve a claim form and particulars of claim of his own volition, which he did.”*

[24] Lord Templeman of the Board of the Judicial Committee of the Privy Council in the authority of **Eldemire v Eldemire; Eldemire v Eldemire**,<sup>28 29 30</sup> made the following pronouncements in this regard: -

*“As a general rule, an originating summons is not an appropriate machinery for the resolution of disputed facts. The modern practice varies. Sometimes when disputed facts appear in an originating summons proceeding, the court will direct the deponents who have given conflicting evidence by affidavit to be examined*

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<sup>28</sup> (1990) 38 WIR 234

<sup>29</sup> See – **Goodison v Goodison** (1995) 49 WIR 251 at 259 per Forte JA who quoted the paragraph with approval, stating: *“The dicta cited above demonstrate that where, given the circumstances of the case, the issues can be fairly resolved in spite of the irregularity in procedure, the courts will allow the matter to proceed in order to determine the substantive issues.”* See also, the dicta of Patterson JA (Ag.) (as he then was) at page 270: *“In the instant case, no useful purpose can be served by commencing the matter de novo. Any order that could be made in such fresh proceedings under the Married Women’s Property Act can be made on this summons and, quite apart from the time that would be lost, each party would be placed at great expense without any real benefit if the matter is commenced afresh. Before the trial date, the irregularity was ignored. While I do not wish to encourage procedural irregularities, it is my opinion that, in the circumstances of this case, no injustice will be done...”*.

<sup>30</sup> See – **Melville & Ors v Melville** (1996) 52 WIR 335 per Patterson JA: *“It is neither necessary nor desirable for us to recite the issues patent on the affidavits which the trial judge considered. The hearing occupied eight days of his time. The defendants were refused leave to cross-examine the plaintiff, which they considered was necessary in order to clarify issues arising on the plaintiff’s affidavits. The hearing proceeded on affidavit evidence alone and a vast number of exhibits. The judge granted the declarations and orders sought in paragraphs 1 to 6 of the originating summons...The issues raised were many and complex, and the facts in serious dispute were contained in a multiplicity of affidavits. It would be inappropriate to order that the matter should continue as if begun by writ, and the affidavits as pleadings. We concluded that this was a case in which the pleadings should be clearly stated. Had cross examination of the plaintiff been allowed, even then the ends of justice may not have been served, having regard to the serious disputes of facts. Accordingly, the matter ought not to have been heard on an originating summons. We were not unmindful of the considerable costs that all the parties must have incurred so far, but nevertheless we formed the view that, in order to ensure that the issues were fairly placed before the court and that a just conclusion be arrived at, the proper course to adopt was to dismiss the originating summons proceedings, leaving the plaintiff to proceed by writ.”*

*and cross-examined orally and will then decide the disputed facts. Sometimes the court will direct that the originating summons proceedings be treated as if they were begun by writ and may direct that an affidavit by the applicant be treated as a statement of claim. Sometimes, in order to ensure that the issues are properly deployed, the court will dismiss the originating summons proceedings and leave the applicant to bring a fresh proceeding by writ. In general, the modern practice is to save expense without taking technical objection, unless it is necessary to do so in order to produce fairness and clarification.”*

### **The nature and import of pleadings**

- [25] The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties. Pleadings serve the two-fold purpose of informing each party of the case of the opposing party and, at the same time, informing the court of the issues between the parties that will govern the interlocutory proceedings between them and which the court will have to determine at the trial.<sup>31</sup>
- [26] Pleadings are therefore required to demarcate the parameters of the case that is being advanced by each party to an action and are critical to identify not only the issues joined between the parties but the extent of the dispute between them.
- [27] Lord Woolf MR, in **McPhilemy v Times Newspapers Ltd and others**,<sup>32</sup> provides a comprehensive analysis of the nature and importance of pleadings. He states as follows: -

*“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that*

<sup>31</sup> See – **Bullen and Leake and Jacob's Precedents of Pleadings**, 12<sup>th</sup> edition, at page 3

<sup>32</sup> [1999] 3 All ER 775, at pages 792 j - 793 b

*pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.”*<sup>33</sup>

### **The duty of a claimant to set out his case**

**[28]** The obligation of a litigant to set out his case has been encapsulated in and streamlined by the CPR.

**[29]** Rule 8.9 of the CPR outlines the duty of a claimant to set out his case. The relevant provisions of the rule are set out below: -

*“8.9 (1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.*

*(2) Such statement must be as short as practicable.*

*(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.*

*(4) Where the claim seeks recovery of any property, the claimant's estimate of the value of that property must be stated.*

*(5) The particulars of claim must include a certificate of truth in accordance with rule 3.12.”*

**[30]** Rule 8.9(1) of the CPR requires a claimant to include in his claim form or particulars of claim, a statement of all the facts on which he intends to rely. The language of the rule is plain and precise. The word ‘must’, as used in the context of the rule, is absolute. It places on a claimant a strict and unqualified duty to adhere to its conformity. Failure to comply with the rule as mandated offends the rule.

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<sup>33</sup> See also – **Gasoline Retailers of Jamaica Limited v Jamaica Gasoline Retailers Association** [2015] JMCA Civ 23, at paragraph [48], per Morrison JA (as he then was) and **Desmond Kinlock v Denny McFarlane & Others** [2019] JMCA Civ 20, at paragraphs [27] and [28], per Palmer J



## The law in relation to forgery

**[31]** Section 3 of the Forgery Act of Jamaica defines the term “forgery”. The section provides as follows: -

*“3.-(1) For the purposes of this Act, “forgery” is the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.*

*(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false –*

*(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; or*

*(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or*

*(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should be pass as having been made by some person, real or fictitious, other than the person who made or authorized it:*

*Provided that a document may be a false document notwithstanding that it is not false in such manner as is in this subsection set out.*

*(3) For the purposes of this Act –*

*(a) it is immaterial in what language a document is expressed or in what place within or without Her Majesty’s dominions it is expressed to take effect;*

*(b) forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law;*

*(c) the crossing on any cheque, draft on a banker, post office money order, postal order, coupon, or other document the crossing of which is authorized or recognized by law, shall be a material part of such cheque, draft, order, coupon, or document."*

### The law in relation to fraud

[32] It is trite law that in order to successfully raise fraud, it must be precisely alleged, pleaded, particularized and strictly proved.<sup>34</sup> <sup>35</sup> The court should not be asked to infer fraud or fraudulent intention from general allegations. Lord Selbourne in the oft-cited case of **Wallingford v The Directors of Mutual Society**<sup>36</sup> made the following salient pronouncements: -

*"With regard to fraud...general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any court to understand what it is that was alleged to be fraudulent. These allegations, I think, must be entirely disregarded..."*

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<sup>34</sup> Per Thesiger LJ in the authority of **Davy v Garrett** [1878] 7 Ch. D. 473, at paragraph 489: *"In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts. It is said that a different rule prevailed in the Court of Chancery. I think that this cannot be correct. It may not be necessary in all cases to use the word "fraud"- indeed in one of the most ordinary cases it is not necessary. An allegation that the Defendant made to the Plaintiff representations on which he intended the Plaintiff to act, which representations were untrue, and known to the Defendant to be untrue, is sufficient. The word "fraud" is not used, but two expressions are used pointing at the state of mind of the Defendant- that he intended the representations to be acted upon, and that he knew them to be untrue. It appears to me that a Plaintiff is bound to shew distinctly that he means to allege fraud."*

<sup>35</sup> This principle has been accepted, adopted and endorsed in the authorities of **Sunshine Dorothy Thomas and Winsome Blossom Thompson (Executrices of the Estate of Leonard Adolphus Brown, deceased)** and **Owen Brown v Beverley Davis** [2015] JMCA Civ 22, **Barbican Heights Ltd v Seafood and Ting International Ltd** [2019] JMCA Civ 1 and **Harley Corporation Guarantee Investment Company Ltd v Estate Rudolph Daley and Others** [2010] JMCA Civ 46.

<sup>36</sup> [1880] 5 AC 685 at 697

- [33] Harris JA in the authority of **Harley Corporation Guarantee Investment Company Ltd v Estate Rudolph Daley and Others**<sup>37</sup> opined: -

*“[57] The Civil Procedure Rules however do not expressly provide that fraud must be expressly pleaded. However, rule 8.9(1) prescribes that the facts upon which a claimant relies must be particularized. It follows that to raise fraud, the pleading must disclose averments of fraud or the facts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud.”*

- [34] The dicta of McDonald-Bishop JA (Ag.) (as she then was) in the authority of **Sunshine Dorothy Thomas and Winsome Blossom Thompson (Executrices of the Estate of Leonard Adolphus Brown, deceased) and Owen Brown v Beverley Davis**<sup>38</sup> is particularly instructive: -

*“[107] Although an allegation of fraud in civil proceedings must be proved to the requisite civil standard, that being, on the balance of probabilities, the authorities have established that the evidence in support of it must be commensurate with the seriousness of the allegation, which, intrinsically, involves the imputation of the commission of a criminal offence. The courts, in practice, have recognised that the more serious the allegation with which a civil court is faced, the more difficult it will be for the party who bears the burden of proving the truth of that allegation to persuade the court of the probability of its truth. In other words, the authorities have established that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. Therefore, the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it...”*

*[108] In **John Chin v Watson’s (Off-Course Betting) Ltd** (1974) 12 JLR 1431 Rowe J (as he then was) helpfully cited from Kerr on Fraud and Mistake (7<sup>th</sup> edn) page 672, the following excerpt, which proves quite instructive on the point. It reads:*

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<sup>37</sup> [2010] JMCA Civ 46

<sup>38</sup> [2015] JMCA Civ 22

*“The law in no case presumes fraud. The presumption is always in favour of innocence and not of guilt. In no doubtful matter does the court lean to the conclusion of fraud. Fraud is not to be assumed on doubtful evidence. The facts constituting fraud must be clearly and conclusively established. Circumstances of mere suspicion will not warrant the conclusion of fraud. The proof must be such as to create belief not merely suspicion.”*

[109] The fraud that is required to be clearly and conclusively proved by cogent and credible evidence in order to vitiate the registered transfer in question in this case has long been settled on strong and binding authority that has been followed by this court. In *Harley Corporation Guarantee Investment Company Ltd v Daley and Others* [2010] JMCA Civ 46, Harris JA took note of several of the authorities on the subject in considering the question whether there was sufficient evidence of fraud, in that case, to impeach the transfer of registered land to a third party. At paragraph [52] of the judgment, she noted:

*“[52] The true test of fraud within the context of the [Registration of Titles] Act means actual fraud, dishonesty of some kind and not equitable or constructive fraud. This test has been laid down in **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] AC 101 by Salmon LJ, when at page 106, he said:*

*‘Now fraud clearly implies some act of dishonesty. Lord Lindley in **Assets Co. v Mere Roihi** (2) states that: ‘Fraud in these actions’ (i.e., actions seeking to affect a registered title) ‘means actual fraud, dishonesty of some sort, not what is called constructive or equitable fraud – a unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud’.*”

[110] Lord Lindley, in **Assets Company Limited v Mere Roihi** (1905) AC 176, had also stated at page 210 that the fraud which must be proved “in order to invalidate the title of the registered proprietor for value must be brought home to the person whose registered title is impeached or to his agents.”

[111] In **Stuart v Kingston** (1923) CLR 309 (another case noted by Harris JA) Starke J, at page 359, stated:

*“No definition of fraud can be attempted, so various are its forms and methods...But we must say this: fraud will no longer be imputed to a proprietor registered under the Act unless some consciously dishonest act can be brought home to him. The imputation of fraud based upon the refinements of the doctrine of notice has gone. But the title of the person who acquires it by dishonesty, by fraud (sec. 69), by acting fraudulently (sec. 187), or by being a “party to fraud” (sec. 187), in the plain ordinary and popular meaning of those words is not protected by reason of registration under the Act.”*

*Knox CJ, in the same case, described the kind of conduct that would amount to fraud as “personal dishonesty” or “moral turpitude”.*”

### **The principle of the indefeasibility of a registered title**

[35] The principle of the indefeasibility of a registered title is one of the fundamental principles that forms the bedrock of the system of registration of land system. Sections 68, 70, 71 and 161 of the Registration of Titles Act (“the ROTA”) provide the following: <sup>-39</sup>

*“68. No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.*

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<sup>39</sup> See also sections 162 and 168 of the ROTA

...

70. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

...

71. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease, mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

...

161. No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say –

(a) ...

(b) ...

(c)...

*(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;*

(e) ...

*And in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding.”*

- [36]** Section 158(1) of the ROTA empowers a Judge to direct the Registrar of Titles to cancel or correct any certificate of title or instrument or any entry or memorandum in the Register Book, relating to such land, estate or interest and to issue, make or substitute such certificate of title, instrument, entry or memorandum or do such other act, as the circumstances of the case may require. The Registrar of Titles shall give effect to that direction. In section 158(2) of the ROTA, the Judge has a similar power to either (a) direct the Registrar of Titles to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order (b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.

### **Expert witnesses**

- [37]** Stroud’s Judicial Dictionary defines an expert witness as “one who has made the subject upon which he speaks a matter of particular study, practice or observation; and he must have a particular and special knowledge of the

subject.”<sup>40</sup> Expert Witnesses are generally instructed to prepare and give evidence for the purpose of court proceedings.<sup>41</sup> Part 32 of the CPR details the applicable procedure regarding the evidence of expert witnesses, as expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly. Expert Witnesses have a duty to assist the court to impartially on the matters relevant to his or her expertise, overriding obligations to the person(s) by whom he or she is instructed and/or paid.<sup>42</sup> Importantly, expert witnesses must also provide unbiased opinions in relation to matters within their expertise.<sup>43</sup> Generally, the evidence of expert witnesses must be contained in a written report addressed to the Court.<sup>44</sup>

**[38]** Rule 32.13 of the CPR indicates what expert reports must contain: -

*“32.13(1) An expert witness’s report must –*

*(a) give details of the expert witness’s qualifications;*

*(b) give details of any literature or other material which the expert witness has used in making the report;*

*(c) say who carried out any test or experiment which the expert witness has used for the report;*

*(d) give details of the qualifications of the person who carried out any such test or experiment;*

*(e) where there is a range of opinion on the matters dealt within in the report –*

*(i) summarise the range of opinion; and*

*(ii) give reasons for his or her opinion, and*

*(f) contain a summary of the conclusions reached.*

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<sup>40</sup> See Paragraph 22 of **The Attorney General of Jamaica & North East Regional Health Authority v Shelton Sortie (by his mother and next friend Shanett Sortie)** [2023] JMCA App 17, per Laing JA (Ag) (as he then was).

<sup>41</sup> See rule 32.1(2) of the CPR

<sup>42</sup> See rule 32.3(1) and rule 32.3(2) of the CPR.

<sup>43</sup> See rule 32.4(1) of the CPR

<sup>44</sup> See rules 32.7(1) and 32.12 of the CPR



*(2) At the end of an expert witness's report there must be a statement that the expert witness –*

*(a) understands his or her duty to the court as set out in rules 32.3 and 32.4;*

*(b) has complied with that duty;*

*(c) has included all matters within the expert witness's knowledge and area of expertise relevant to the issue on which the expert evidence is given; and*

*(d) has given details in the report of any matters which to his or her knowledge might affect the validity of the report.*

*(3) There must be also attached to an expert witness's report copies of –*

*(a) all written instructions given to the expert witness;*

*(b) any supplemental instructions given to the expert witness since the original instructions were given; and*

*(c) a note of any oral instructions given to the expert witness, and the expert witness must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert witness, the party's attorney-at-law or any other person acting on behalf of the party.*

*(4) Where an expert report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.*

*(5) Where it is not practicable to provide a copy of the documents referred to in paragraph (4), such documents must be made available for inspection by the other party or any expert witness instructed by that party within 7 days of a request so to do."*

## The approach of the Court to expert evidence

- [39] The United Kingdom Supreme Court in the authority of **Griffiths v TUI (UK) Ltd**<sup>45</sup> opined: -

*“It is trite law that as a generality in civil proceedings, the claimant bears the burden of proof in establishing his or her case. It is trite law that the role of an expert is to assist the court in relation to matters of scientific, technical or other specialized knowledge which are outside the judge’s expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case. Thus, as a general rule, the judge has the task of assessing the evidence of an expert for its adequacy and persuasiveness.”*

- [40] The Jamaican Court of Appeal in the authority of **Clarke v Beckford et al**<sup>46 47</sup> made the following pronouncements: -

*“The peril facing expert evidence is that, like any other evidence tendered, it may for good reason, be rejected. The trial [sic] judge had the benefit of listening to and observing this witness testify...Further, he had the benefit of addresses from counsel for both parties who examined his evidence in great detail and then he demonstrated in his judgment his assessment of the evidence before concluding that he preferred the real evidence to the comparison evidence.”*

- [41] More recently, in the authority of **Paul Duncanson v Derrick Sharpe & Anor**,<sup>48</sup> Pettigrew-Collins J opined as follows: -

*“[37] The court must consider the evidence of the expert and decide if that evidence is to be accepted...”*

*[38] Expert evidence must be assessed in the context of the other evidence given in the case. That evidence should be tested against known facts. A judge is entitled to disagree with an expert if there is a clear basis on which that can be done. It is important that the court carefully assesses the quality of the reasoning*

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<sup>45</sup> [2023] 3 WLR 1204

<sup>46</sup> JM 1993 CA 33

<sup>47</sup> See – **Paul Griffith v Claude Griffith** [2017] JMSC Civ 136

<sup>48</sup> [2023] JMSC Civ 34

*of the expert. It means that the reasons given for the conclusion is to be carefully examined.*

*[39] In this instance, the expert explained the analytical process by which she arrived at her conclusion. The court has to decide if the analytical process is logical or illogical, if it is contradictory or not, or if there is the underlying substratum of facts present to support the reasoning and conclusion.*

*[40] The court must also take into consideration the nature of the science involved. In this case, we are not concerned with a matter of physical science where matters can be proved to a point of near certainty. Rather, the expert can say whether the characteristics of the handwriting in the questioned document are consistent or inconsistent with that in the documents used for comparison. Where, as has happened in the present case, it is determined that the handwriting (in this case signature) in the questioned document is inconsistent with that in the documents used for comparison, such evidence may serve to bolster the claim that the handwriting said to be that of the deceased, Mrs Williams, on the questioned document, is not in fact her signature.*

*[41] It is against the background of the considerations set out above, that this case must be examined. This court recognizes that unless there exists very cogent reasons for disagreeing with the evidence of an expert, a court should not lightly depart from findings made by that expert, especially in circumstances where there is no expert evidence contradicting that of the expert with whose findings the court disagrees...".*

### **The approach to be adopted by the Court in circumstances where there are conflicting expert opinions**

**[42]** The dicta of Henry LJ, in the authority of **Flannery and Anor v Halifax Estate Agencies Ltd (trading as Colleys Professional Services)**,<sup>49</sup> is demonstrative of the approach to be adopted by a tribunal when treating with conflicting expert evidence. At page 381, Henry LJ made the following pronouncements: -

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<sup>49</sup> [2000] 1 WLR 377

*“It is not a useful task to attempt to make absolute rules as to the requirement for the judge to give reasons. This is because issues are so infinitely various. For instance, when the court, in a case without documents depending on eye-witness accounts is faced with two irreconcilable accounts, there may be little to say other than that the witnesses for one side were more credible: see de Smith, Wolf and Jowell, Judicial Review of Administrative Action, 5<sup>th</sup> ed. (1995), pp. 465-466, para. 9-049. But with expert evidence, it should usually be possible to be more explicit in giving reasons: see Bingham L.J. in Eckersley v Binnie (1988) 18 Con. L.R. 1, 77-78:*

*‘In resolving conflicts of expert evidence, the judge remains the judge; he is not obliged to accept evidence simply because it comes from an illustrious source; he can take account of demonstrated partisanship and lack of objectivity. But, save where an expert is guilty of a deliberate attempt to mislead (as happens only very rarely), a coherent reasoned opinion expressed by a suitably qualified expert should be the subject of a coherent reasoned rebuttal, unless it can be discounted for other good reasons. The advantages enjoyed by the trial judge are great indeed, but they do not absolve the Court of Appeal from weighing, considering and comparing the evidence in the light of his findings, a task made longer but easier by possession of a verbatim transcript usually (as here) denied to the trial judge.’*

**[43]** In the authority of **English (appellant) v Emery Reimbold & Strick (respondents) & Ors**,<sup>50</sup> Lord Phillips MR stated: -

*“It is legitimate, where there is a direct conflict of expert evidence, for the judge to prefer the evidence of one expert to the other simply on the ground that he was better qualified to give it, or was a more authoritative witness, if the judge is unable to identify any more substantial reason for choosing between them. This should not often be the case. If this is the basis for the judge’s conclusion, he should make it plain.”*

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<sup>50</sup> [2002] EWCA Civ 605

## The burden and standard of proof

[44] The legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue and to whose claim or defence proof of the fact in issue is essential.<sup>51</sup> The standard of proof in civil cases is satisfied on a balance of probabilities.

[45] In **Miller v Minister of Pensions**,<sup>52</sup> Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said: -

*“That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’, the burden is discharged but if the probabilities are equal, it is not.”*

[46] Thompson-James J in the authority of **Paul Griffith v Claude Griffith**<sup>53</sup> made the following illustrative pronouncements: -

*“[47] The authorities show that where the allegation is serious, such as in the case of forgery, convincing evidence is required for that burden to be discharged. [Vacianna v Herod [2005] EWHC 711 (Ch); Fuller v Strom [2000] All ER (D) 2392]. In Vacianna v Herod, the Court agreed with the learned authors of Williams, Mortimer and Sunnucks on Executors, Administrators and Probate (18<sup>th</sup> Edition, 2000), para 13.61, wherein it is stated that although Forgery is a criminal offence, since a probate action is a civil proceeding and not a criminal one, the standard of proof is not the same as in criminal proceedings. The Court added that the standard of proof ‘is on the balance of probabilities’ but also added the caveat that:*

*‘Insofar as they appear to be suggesting that, notwithstanding that the civil standard of proof applies, something more than a mere balance of probabilities is required, it seems to me one has to tread very warily. The*

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<sup>51</sup> See – **Murphy on evidence**, 9th edition, at page 71, paragraph 4.5

<sup>52</sup> [1947] 2 All ER 372, at pages 373-374

<sup>53</sup> [2017] JMSC Civ 136

*more serious the allegation...convincing evidence is required. However, insofar as that statement might be suggesting something akin to a criminal standard of proof is required, I respectfully do not agree with it"*

*[paras 20-21].*

[48] Also, in **Fuller v Strom** the Court stated the following on the point:

*"While I recognise that the standard of proof is the civil standard on the balance of probabilities, it is well recognized 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 balance, the event has occurred: see In re Hand others [1996] AC 563 per Lord Nicholls of Birkenhead at page 56."*

[49] Further, in Halsbury Laws of England, Civil Procedure (Volume 11 (2009) 5<sup>th</sup> Edition, paras 1-1108; Volume 12 (2009) 5<sup>th</sup> Edition, paras 1109-1836, the learned authors explained the burden of proof as follows:

*"...it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the Court has to take into consideration in deciding whether or not the burden of proof has been discharged: the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."*

## **THE SUBMISSIONS**

### **The submissions advanced on behalf of the Claimant**

#### **The burden and standard of proof**

[47] Learned Counsel Mrs Abi-Gaye White-Thomas, in her detailed and comprehensive written submissions on behalf of the Claimant, Mr Carlton Campbell, began with an important statement in relation to the burden and standard of proof. In this regard, Mrs White-Thomas correctly asserted that it is

for the Claimant, Mr Carlton Campbell, to prove on a balance of probabilities or on a preponderance of the evidence that the Defendant, Mrs Jacqueline Willacy, committed fraud. To buttress this submission, Mrs White-Thomas referred the Court to the authorities of **Paul Griffith v Claude Griffith**<sup>54</sup> and **Fuller v Strum**.<sup>55</sup>

**Whether a claim grounded in fraud can properly be initiated by way of a fixed date claim form**

- [48] In this regard, Mrs White-Thomas submitted that the authorities of **Paul Griffith v Claude Griffith**<sup>56</sup> and **Beverley Lewis and Anor v Cleveland Hartley**<sup>57</sup> are authorities which concerned allegations of fraud and in respect of each of which the proceedings were initiated by way of a fixed date claim form. Mrs White-Thomas accepted that, while no issue was raised in either of those cases regarding the initiation of those claims by way of a fixed date claim form, but asserted that the Court should be guided by the pronouncements of the Judicial Committee of the Privy Council in the authority of **Eldemire v Eldemire**.<sup>58</sup> There, Mrs White-Thomas submitted, the Privy Council opined that where a party had proceeded by means of an incorrect originating process, the court has a discretion to proceed despite that defect. This decision, Mrs White-Thomas further submitted, was made in the context of the alternative processes being both subject to the rules of the court, more specifically, the fixed date claim form as well as the claim form are both subject to the rules of the court. In this regard, Mrs White-Thomas relied on the authorities of **Higgins, Marlan (Executor of Estate of Egbert Higgins) v Johnson, Geoffrey (Sued as Junior Johnson)**<sup>59</sup> and **Ralph Williams and Ors v The Commissioner of Lands and Times Square West Holdings Ltd.**<sup>60</sup>

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<sup>54</sup> [2017] JMSC Civ 136

<sup>55</sup> [2000] All ER (D) 2392

<sup>56</sup> [2017] JMSC Civ 136

<sup>57</sup> [2016] JMSC Civ 34

<sup>58</sup> [1990] UKPC 36

<sup>59</sup> [2019] JMSC Civ 134

<sup>60</sup> [2012] JMSC Civ 118

- [49] Mrs White-Thomas maintained that the Court may exercise its discretion to convert the proceedings to ensure that all the issues in the case are fairly placed before the court. This, as outlined in rule 8.1(4)(b) of the Civil Procedure Rules. Mrs White-Thomas submitted that no objection was raised on behalf of Mrs Jacqueline Willacy regarding the form used to initiate the proceedings and further, that the Mrs Jacqueline Willacy would not be prejudiced by having the matter concluded, as the Court has already received the evidence of the parties as well as that of the expert witnesses.
- [50] It was submitted that the Civil Procedure Rules, 2002, as amended (“the CPR”) do not mandate that fraud must be expressly pleaded. Rule 8.9 of the CPR requires that the facts upon which a claimant relies must be clearly stated. To substantiate this submission, Mrs White-Thomas relied on the authority of **Harley Corporation Guarantee Investment Company Limited et al v RBTT Bank Jamaica Limited and Estate Rudolph Daley and Ors.**<sup>61</sup>

#### **The allegations of fraud**

- [51] It was also submitted that the Claimant, Mr Carlton Campbell, has specifically pleaded the allegations of fraud in his Affidavit in Support of the Fixed Date Claim Form. Those allegations of fraud have been particularized as the Defendant, Jacqueline Willacy, being aided and assisted by Valda Smith-Ferguson and a Justice of the Peace, fraudulently signing correspondences as well as the Instrument of Transfer, in respect of the subject property, purporting to be the now deceased Conrad Campbell. Further, Mrs White-Thomas maintained, the Defendant, Mrs Jacqueline Willacy and Ms Valda Smith-Ferguson lodged the same at the National Land Agency for the ownership of the subject property to be transferred to the former. Mrs White-Thomas maintained that both the Instrument of Transfer and the Forensic Document Examiner’s findings have been exhibited as the documentary evidence in this case. In the circumstances, the finding of forgery of the signature of the now deceased Conrad Campbell, is evidence of fraud.

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<sup>61</sup> [2010] JMCA Civ 46 at paragraph 57



- [52] Additionally, Mrs White-Thomas submitted that the findings contained in the Expert Report of Ms East strongly supports the case of the Claimant, Mr Carlton Campbell, that the signatures on the documents which were submitted to the NLA and those on the Last Will and Testament of Mr Conrad Campbell, are forgeries. Mrs White-Thomas maintained that these documents, though purportedly signed by Mr Conrad Campbell, do not bear his authentic signature.
- [53] To that end, Mrs White-Thomas submitted that actual fraud occurred with the execution of the Transfer Instrument by someone other than Mr Conrad Campbell. Section 3 of the Forgery Act of Jamaica defines “forgery” as the making of a false document in order that it may be used as genuine and a document is “false” within the meaning of the Act, if the whole or any material part thereof purports to be made by, or on behalf of or on account of a person who did not make it nor authorize its making. The documents submitted to the NLA bore the signature of the sole proprietor of the subject property, which was forged to make it appear as similar as possible to that of the now deceased, Mr Conrad Campbell.
- [54] Consequently, Mrs White-Thomas further submitted, the Defendant, Mrs Jacqueline Willacy, derived her interest from a transfer by way of gift and ought not to be considered as a bona fide transferee for value. Mrs White-Thomas maintained that the Defendant, Mrs Jacqueline Willacy, cannot rely on the defence that the fraudulent circumstances resulting in her registration on the Certificate of Title in respect of the subject property were not known to her. To support this submission, Mrs White-Thomas relied on the authority of **Ervin McLeggan v Daphne Scarlett and the Registrar of Titles**.<sup>62</sup>
- [55] Mrs White-Thomas submitted that the evidence is as follows: -
- a. The Defendant, Mrs Jacqueline Willacy, testified during cross-examination that she signed the Instrument of Transfer after her father did. As such, Mrs Jacqueline Willacy knew or ought to have

known that the Instrument of Transfer, which she admitted that she signed after her father did, was not made by him [Conrad Campbell] or signed by him [Conrad Campbell].

- b. Several amendments were made to the Instrument of Transfer which included an amendment to the spelling of the Transferor's name as well as an amendment to the lodgement details to state that same was lodged by Ms Valda Smith-Ferguson and not by the now deceased, Mr Conrad Campbell.
- c. The lodgement of the various documents with the NLA and the several requisitions which were made by the NLA with respect to amendments which needed to be made, mean that the Defendant, Mrs Jacqueline Willacy, knew or ought to have known of the fraud.
- d. The letter from TAJ, which is dated 17 February 2017, indicated that Ms Valda Smith-Ferguson paid the requisite transfer tax and stamp duty. The evidence is that Mrs Smith-Ferguson obtained a receipt in respect of the payment of the same, which the Defendant, Mrs Jacqueline Willacy, in cross-examination, averred that she sent to Mrs Smith-Ferguson, the money from which the transfer tax and stamp duty were paid.
- e. Although the Defendant, Mrs Jacqueline Willacy, tried to distance herself from the actions of Mrs Smith-Ferguson in the transaction, the former, in cross-examination, testified confirming that Mrs Smith-Ferguson gave her [Mrs Jacqueline Willacy] the endorsed Certificate of Title, in respect of the subject property, on 24 March 2017. The existence of Mrs Jacqueline Willacy's relationship with Mrs Smith-Ferguson was further confirmed by Mrs Jacqueline Willacy's evidence that "After the passing of my dad, Valda Smith-Ferguson collected the Death Certificate. I tasked her to do that."

- f. Mrs Jacqueline Willacy confirmed in cross-examination that she left Mrs Smith-Ferguson to oversee the execution of the work which was being done on the subject property.
- g. During cross-examination, Mrs Jacqueline Willacy testified that she was in Jamaica at the time the Instrument of Transfer was relodged, which was shortly after the death of Conrad Campbell.
- h. The Death Registration Forms which form part of the documentary evidence in the instant case, indicate that the address for Mrs Valda Smith-Ferguson and that of the Justice of the Peace who witnessed the attesting of the Last Will and Testament, which purports to be that of the now deceased, Mr Conrad Campbell, is that of 51 Gill Drive, Ironshore, in the parish of St. James. This, Mrs White-Thomas asserts, demonstrates a relationship between the parties.
- i. Based on the evidence before the Court, the Defendant, Mrs Jacqueline Willacy, was aided and assisted to present forged documents to the NLA to obtain an interest in the subject property.

### **The evidence of the expert witnesses**

**[56]** Mrs White-Thomas urged the Court to accept the expert evidence proffered by Ms Beverley East, who, Mrs White-Thomas submitted, provided detailed and compelling reasons to conclude that the signatures questioned were not written by Mr Campbell. According to Ms Beverley East's evidence, Mrs White-Thomas submitted, there are unique characteristics of the known signatures of Mr Conrad Campbell. These unique characteristics are as follows: -

- a. An open "o" connected angularly to the "n".

- b. An isolated “a” with a closed top and short stem, and a distinct capital “A”.
- c. The “d” in the known signatures is proportionally smaller in both the base and stem.
- d. The common “a” in the last name connects angularly to the “m”.
- e. There is a unique connection between the “b” and “e”, in the last name.
- f. The “C” in the first name consistently reaches the highest crestline.
- g. Legible ending to the last name positioned above the baseline.

**[57]** It was further submitted that Ms East also examined the differences in the questioned signatures and found as follows: -

- i. That the questioned signatures show significant inconsistencies in formation and crestline positioning compared to the known signatures.
- ii. That variations are noted in the connection between the “o” and “n” in the first name.
- iii. That the proportional size and shape of the “a” (both common and capital) differ between the known and questioned signatures.
- iv. That there are notable differences in the formation of the “d” and the connection between the “a” and “m” in the last name.
- v. Inconsistencies in terminal endings, including spelling and line quality.

**[58]** Mrs White-Thomas asserted that Ms East’s expert opinion is based on the well-established principle that handwriting is habitual and unique. This means, Mrs White-Thomas submitted, that the movements, spacing and line quality of a person’s signature are as individual as a fingerprint. It was submitted that Ms East’s finding that the questioned signatures exhibit too many fundamental and significant differences from the known signatures of Mr Conrad Campbell leads to the inevitable conclusion that the quoted signatures were forged. It was further submitted that when Ms East was questioned in relation to the known documents

provided to the Defendant's expert witness, Mr Robert Lesnevich, Ms East maintained her position. Mrs White-Thomas maintained that Ms East noted that the same habitual writing patterns were still present in Mr Conrad Campbell's authentic signatures, further validating the discrepancies which she found in the questioned signatures.

- [59] It was submitted that Ms East, during cross-examination, testified that she did not accept that individual signature changes with age. When cross-examined on the use of the known signatures which were used as part of her examination, Ms East highlighted her experience in the Caribbean region, which does not always allow her to have signature documents readily available to her for review. Ms East's evidence in this regard was that she was successful in three (3) cases where **no** signatures were available at all.
- [60] Mrs White-Thomas asserted that the issue of variation and habitual writing pattern is an area which both expert witnesses have addressed. During cross-examination, Ms East stated that the habitual writing pattern was seen in all six (6) known signatures which she examined. These were labelled "K1" - "K6". In contrast, Mr Lesnevich testified that variation and habitual writing patterns are the same. Mrs White-Thomas maintained that Mr Lesnevich's explanation pertains solely to the concept of variation in a signature, without addressing or defining the concept of a habitual writing pattern, as identified by Ms East in the known business documents of the now deceased, Mr Conrad Campbell.
- [61] Mrs White-Thomas submitted that the analysis conducted by Mr Robert Lesnevich was flawed, beginning with the written instructions he received regarding the matter. His report, which was received in evidence as Exhibits 3-5, respectively, focusses primarily on identifying similarities between signatures.
- [62] The comparison charts provided in Mr Lesnevich's report do not encompass all the questioned signatures, and as a result, do not offer the Court sufficient assistance in resolving the critical issues before it.

**[63]** Mrs White-Thomas observed that in his report, Mr Lesnevich identified the documents used during his analysis and these documents, labelled “K1”, form part of the questioned documents associated with the lodgements at the NLA. These documents include: -

1. Letter to the Office of Titles with an incomplete date in 2017.
2. Letter to the Tax Administration of Jamaica dated 6 January 2017.
3. Letter to the Tax Administration of Jamaica dated 31 October 2016.
4. Letter to the Jamaica Public Service Co. Ltd dated 25 July 2016.

**[64]** Mrs White-Thomas maintained that the use of these documents, which all relate to the same fraudulent transaction, undoubtedly compromise the accuracy of Mr Lesnevich’s analysis. As such, any findings made from these documents must be viewed with caution, as they adversely impact the reliability of his conclusions. The purported Last Will and Testament of Conrad Campbell was used as a known signature when Ms Beverley East had determined that those signatures were not authentic.

**[65]** Mr Lesnevich was asked about his conclusion regarding the following characteristics: -

#1: “pictorial similarities”

#7: “height relationship”

#11: “proportions” and

#15: “strokes”

**[66]** In his responses, Mr Lesnevich attributed any observed differences between the known and questioned signatures to “variations” in the handwriting. This is, Mrs White-Thomas asserted, despite the fact that his report concluded that these individual characteristics were the same between the signatures. It was submitted that the report fails to account for the inconsistencies identified.

**[67]** Mrs White-Thomas relied on the dicta of the court in the authority of **Fuller v Strum**,<sup>63</sup> in relation to the approach to be adopted by the Court in circumstances where there is expert evidence from two experts who do not agree. Mrs White-Thomas submitted that the Court should examine all the evidence submitted by the expert witnesses and determine which evidence is more credible and whether there is any apparent bias in the opinion provided.

**[68]** Finally, Mrs White-Thomas submitted that: -

- a. the Claimant, Mr Carlton Campbell, has proven on a balance of probabilities that the Defendant, Mrs Jacqueline Willacy, knew that Mr Conrad Campbell did not sign the Instrument of Transfer which resulted in her obtaining an interest in the subject property.
- b. the Court ought to properly to declare, on the basis of the evidence provided by Ms Beverley East, that the Instrument of Transfer is a forgery.
- c. pursuant to section 158 of the Registration of Titles Act, the Court is vested with the power to invalidate a registered proprietor's title in cases of fraud, by ordering the Registrar of Titles to cancel or correct the Certificate of Title or any related entry/entries.
- d. the Court ought properly to restore ownership of the subject property to the Estate of Conrad Campbell.

#### **The submissions advanced on behalf of the Defendant**

#### **Whether a claim grounded in fraud can properly be initiated by way of a fixed date claim form**

**[69]** In their concise but equally comprehensive written submissions, Learned Counsel Messrs. Duane Thomas and Javed Grant, began with an indication that

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<sup>63</sup> [2000] All ER (D) 2392

the Defendant, Mrs Jacqueline Willacy did not object by way of an application or otherwise to the commencement of the instant Claim by way of a Fixed Date Claim Form.

- [70] It was submitted that rules 8.1(3) and 8.1(4) of the CPR detail the proceedings where a form 2 (fixed date claim form) must be used and further, that the CPR provides that a claim of this nature, with substantial disputes of facts, ought properly to be commenced by way of a claim form. Notwithstanding the absence of an objection, this Court was invited to exercise its discretion in its determination of how to treat with the issue of the claim having commenced in the “wrong way”.

### **The allegations of fraud**

- [71] It was submitted that the Claimant, Mr Carlton Campbell, failed to specifically plead and particularize the fraud as alleged. The viva voce evidence, coupled with the expert reports provided by Ms Beverley East, did not cure the defect in specifically pleading and particularizing the fraud. At best, Ms East’s evidence only provides an opinion based on a small sample size of known documents more than a decade in age, that the deceased man did not sign the questioned documents. It was submitted that Ms East’s evidence does not assist the Court in satisfying itself that fraud has been specifically and sufficiently pleaded and particularized.
- [72] It was also submitted that Mr Carlton Campbell’s affidavit evidence, at best, contain bald assertions of fraud, but fails to sufficiently particularize the fraud. It was further submitted that, during cross-examination, it was established that Mr Carlton Campbell did not have a close relationship with his deceased father. Nor was Mr Carlton Campbell aware of the day-to-day life of his father or of the persons who were close to him or who were involved in his life. These persons included Mr Rudolph Parkinson and Mrs Valda Smith-Ferguson.
- [73] Conversely, the Defendant, Mrs Jacqueline Willacy, is one who shared a close and healthy relationship with her father. This is supported by the Defendant, Mrs



Jacqueline Willacy, outlining how she assisted her father by paying bills and other expenses and how she was the primary caregiver for her late father, remaining in direct contact with him until his death.

- [74] It was submitted that the Claimant, Mr Carlton Campbell, baldly asserted that the Defendant, Mrs Jacqueline Willacy, with the assistance of others, fraudulently signed documents in relation to the subject property and submitted them to the NLA. Mr Carlton Campbell has not provided any evidence particularizing how, when or where this was done. Consequently, taken at its highest, the case for the Claimant, Mr Carlton Campbell, is a poorly pleaded, bald assertion of fraud.

### **The evidence of the expert witnesses**

- [75] With regard to the expert evidence, it was submitted that the evidence of Ms Beverley East does not advance the case of the Claimant, Mr Carlton Campbell. That evidence, it was submitted, when taken at its highest, is being used to suggest that the documents which were submitted were not signed by Mr Conrad Campbell. The Court was urged to reject the evidence of Ms East for the following reasons: -

- a. The quality of her reasoning is unsound.
- b. The known facts point to a different conclusion.
- c. Her analytical process is illogical.
- d. The nature of the science involved has not evolved sufficiently to provide a logical basis for the certainty that Ms East purports to bestow on her findings.

- [76] The Court was urged to take judicial notice that Ms East, in her Report dated 29 November 2022, which forms Exhibit 1, highlights seven (7) unique identifying characteristics in what she deems as known signatures. Ms East relies on graphic 2 to demonstrate what she purports to be the seven (7) unique identifying characteristics which she has used to identify habitual writing patterns that can be seen in the signature across a period of time. Under cross-examination, it was suggested to Ms East that the seven (7) known characteristics that she deems as

intrinsic to identifying the known signatures of the deceased are not found in all the known samples. It was also suggested to Ms East that some of the known signatures defy the identifying characteristics which she sought to establish. When asked whether she accepts that, Ms East maintained that they did not. On further analysis and observation of Graphic 2, Ms East accepted this suggestion. It was also suggested to Ms East that a sample size of six (6) is small and a small sample size caused her to fail to identify all the variations in the deceased's handwriting. Ms East rejected both these suggestions. It was further submitted that when one looks at the identifying characteristics and graphic 2, it is evident that what Ms East suggests as being identifying characteristics are not found in the known samples and that the known samples also deviate significantly from the identifying characteristics.

- [77] During cross-examination, it was suggested to Ms East that there are a number of characteristics and factors which account for changes or differences in a person's signature. These include natural variation, accidental features, two (2) or more styles, gradual changes in habit, nervousness, writing instrument, writing condition, health and age. It was submitted that Ms East reluctantly accepted this suggestion but refused to accept that a person's signature may change over time due to age. In this regard, it was submitted that the Court should take judicial notice and find that age is a factor which affects or causes change in one's signature. This, Mr Thomas maintains, is addressed substantially by Mr Lesnevich in his evidence.
- [78] It was submitted that the small and old sample size did not provide Ms East with all the relevant facts and details to allow her to make a definitive finding of elimination. It was further submitted that a larger sample size consisting of more contemporaneous documents, would greatly assist Ms East in properly finding a wider substratum of identifying characteristics and would allow her to consider the full range of the deceased's handwriting characteristics.
- [79] Comparatively, Mr Thomas asserts, the Defendant's expert witness, Mr Lesnevich, provided three (3) reports, which form exhibits 3-5, respectively. It

was submitted that the Court should prefer the report and findings of Mr Lesnevich because of the following factors: -

1. His sample size is larger and more contemporaneous.
2. His methodology is logical.
3. His quality of reasoning is sound.
4. His examination treats with all the relevant factors that affect handwriting.
5. His examination appreciates that handwriting examination is not an exact science.

**[80]** Finally, it was submitted on behalf of the Defendant, Mrs Jacqueline Willacy, that the premise of the Claim is based on the expert evidence of a handwriting examiner who has drawn conclusions based on her comparisons of old documents, which were not signed in or around the time the alleged forgery was committed. The Defendant, Mrs Jacqueline Willacy, has provided her own expert's reports which challenge the methods of analysis and conclusions of Ms Beverley East, and which affirm that the documents which were submitted to the NLA were signed by the deceased, Mr Conrad Campbell.

## **ANALYSIS AND FINDINGS**

### **Whether a claim grounded in fraud can properly be initiated by way of a fixed date claim form**

**[81]** The first issue for the Court's determination in the present instance is whether a claim grounded in fraud can properly be initiated by way of a fixed date claim form. In this regard, the authorities make it clear that, if the proceedings are commenced by way of a fixed date claim form, the Court may order that the proceedings continue as though begun by way of a claim form, depending on the nature of the claim, and the fact that there may be significant disputes as to fact.

[82] It is equally clear from a reading of the authorities that the fixed date claim form is an inappropriate method to be adopted where the issues for the court's determination are likely to involve a substantial dispute as to fact. The instant Claim raises issues of fraud on the part of the Defendant, Mrs Jacqueline Willacy, in relation to the transfer of the ownership of the subject property. As a consequence, the Claim does involve substantial disputes as to fact. In that regard, the Court finds that the procedure following the issuance of a claim form is most appropriate in a case such as this, where the nature of the dispute necessitates that there be a trial in open court. Despite the wording of rule 8.1(4)(b), the Court may exercise its discretion to convert the instant proceedings, based on the nature of the Claim and the likely or apparent disputes as to fact. It would therefore be appropriate for the Court, pursuant to its judicial case management powers, to make an order converting these proceedings to claim form proceedings.

[83] Lord Templeman of the Board of the Judicial Committee of the Privy Council in the authority of **Eldemire v Eldemire; Eldemire v Eldemire**,<sup>64 65 66</sup> made the following pronouncements in this regard: -

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<sup>64</sup> (1990) 38 WIR 234

<sup>65</sup> See – **Goodison v Goodison** (1995) 49 WIR 251 at 259 per Forte JA who quoted the paragraph with approval, stating: *"The dicta cited above demonstrate that where, given the circumstances of the case, the issues can be fairly resolved in spite of the irregularity in procedure, the courts will allow the matter to proceed in order to determine the substantive issues."* See also, the dicta of Patterson JA (Ag.) (as he then was) at page 270: *"In the instant case, no useful purpose can be served by commencing the matter de novo. Any order that could be made in such fresh proceedings under the Married Women's Property Act can be made on this summons and, quite apart from the time that would be lost, each party would be placed at great expense without any real benefit if the matter is commenced afresh. Before the trial date, the irregularity was ignored. While I do not wish to encourage procedural irregularities, it is my opinion that, in the circumstances of this case, no injustice will be done..."*.

<sup>66</sup> See – **Melville & Ors v Melville** (1996) 52 WIR 335 per Patterson JA: *"It is neither necessary nor desirable for us to recite the issues patent on the affidavits which the trial judge considered. The hearing occupied eight days of his time. The defendants were refused leave to cross-examine the plaintiff, which they considered was necessary in order to clarify issues arising on the plaintiff's affidavits. The hearing proceeded on affidavit evidence alone and a vast number of exhibits. The judge granted the declarations and orders sought in paragraphs 1 to 6 of the originating summons...The issues raised were many and complex, and the facts in serious dispute were contained in a multiplicity of affidavits. It would be inappropriate to order that the matter should continue as if begun by writ, and the affidavits as pleadings. We concluded that this was a case in which the pleadings should be clearly stated."*

*“As a general rule, an originating summons is not an appropriate machinery for the resolution of disputed facts. The modern practice varies. Sometimes when disputed facts appear in an originating summons proceeding, the court will direct the deponents who have given conflicting evidence by affidavit to be examined and cross-examined orally and will then decide the disputed facts. Sometimes the court will direct that the originating summons proceedings be treated as if they were begun by writ and may direct that an affidavit by the applicant be treated as a statement of claim. Sometimes, in order to ensure that the issues are properly deployed, the court will dismiss the originating summons proceedings and leave the applicant to bring a fresh proceeding by writ. In general, the modern practice is to save expense without taking technical objection, unless it is necessary to do so in order to produce fairness and clarification.”*

- [84]** In the circumstances, this Court is of the view that the issues raised by the Fixed Date Claim Form, which was filed on 18 January 2023, can be fairly resolved in spite of the irregularity of procedure and the Court will allow the matter to proceed in order to determine the substantive issues. The Court finds that no useful purpose can be served by commencing the matter de novo. Quite apart from the fact that time would be lost, each party would be placed at great expense without any real benefit, were the matter to be commenced afresh. Before the trial date, the irregularity was ignored. While this Court does not wish to encourage procedural irregularities, it is the considered view of this Court that, in the circumstances of this case, no injustice will be done.

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*Had cross examination of the plaintiff been allowed, even then the ends of justice may not have been served, having regard to the serious disputes of facts. Accordingly, the matter ought not to have been heard on an originating summons. We were not unmindful of the considerable costs that all the parties must have incurred so far, but nevertheless we formed the view that, in order to ensure that the issues were fairly placed before the court and that a just conclusion be arrived at, the proper course to adopt was to dismiss the originating summons proceedings, leaving the plaintiff to proceed by writ.”*

**Whether the evidence demonstrates on a balance of probabilities that the Defendant committed fraud**

[85] In its approach to its consideration of the issues raised by the Fixed Date Claim Form, which was filed on 18 January 2023, this Court is mindful of the fundamental legal principle that, in relation to fraud, general allegations, however strong may be the words in which they are stated, are insufficient and do not amount to an averment of fraud of which any court ought properly to take notice.

[86] Halsbury's Laws of England, Volume 12 (2009), 5<sup>th</sup> Edition, at paragraphs 1109 - 1836, explains the standard of proof as follows: -

*“...it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged: the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.”*

[87] It is trite law that in order to successfully raise fraud, it must be precisely alleged, pleaded and particularized and strictly proved. Fraud cannot be inferred from the facts in the instant case. Convincing evidence is required for the burden to be discharged. The more serious the allegation, convincing evidence is required. It is also well recognized that, where a serious allegation such as forgery is made, the inherent improbability of the event is itself a matter to be considered.

[88] The main thrust of the Claimant's case is that:

- a. the Defendant, Mrs Jacqueline Willacy, being aided and assisted by Mrs Valda Smith-Ferguson and a Justice of the Peace, fraudulently signed correspondences as well as the

Instrument of Transfer, in respect of the subject property, purporting to be the now deceased Conrad Campbell.

- b. the Defendant, Mrs Jacqueline Willacy, together with Mrs Valda Smith-Ferguson lodged the same Instrument of Transfer at the NLA for the ownership of the subject property to be transferred to Mrs Jacqueline Willacy.
- c. the Forensic Document Examiner's finding of forgery in respect of the signature of the now deceased Conrad Campbell, is evidence of fraud.
- d. the findings contained in the Expert Report of Ms Beverley East strongly supports the assertion that the signatures on the documents which were submitted to the NLA and those on the purported Last Will and Testament of Mr Conrad Campbell, are forgeries.
- e. the Defendant, Mrs Jacqueline Willacy, derived her interest in the subject property from a transfer by way of gift and ought not to be considered as a bona fide transferee for value.

### **The Court's approach to its consideration of the expert evidence**

**[89]** It is in the context of this factual substratum that the expert evidence must be assessed. The authorities make it clear that the Court is entitled to disagree with an expert witness if there is a clear basis on which to do so. The Court must assess the quality of the reasoning of the expert witnesses and the reasons given for their conclusions are to be carefully considered. In the present instance, the expert witnesses explained the analytical process by which each arrived at his or her conclusion. It is for the Court to now decide whether that analytical

process is logical or illogical, contradictory or not or whether there is an underlying factual substratum to support their reasoning and conclusion.

**[90]** The Court must also consider the nature of the science involved. The Court is not here concerned with a matter of physical science where matters can be proved to a point of certainty. Rather, the expert witness can say whether the characteristics of the handwriting contained in the questioned document are consistent or inconsistent with that which is contained in the documents which are used for comparison purposes. Where it is determined that the handwriting (in this case the signature of the now deceased Conrad Etwal Campbell), which is contained in the questioned document is inconsistent with that which is contained in the documents used for comparison purposes, such evidence may serve to bolster the Claim that the handwriting said to be that of the now deceased on the questioned document, is not in fact his signature.

**[91]** It is against the background of the considerations set out above that the evidence adduced in the instant case, must be assessed and considered.

### **The expert evidence**

**[92]** Ms Beverley East, Certified Forensic Document Examiner, indicated that she examined all documents for comparison by using accepted scientific principles and techniques of document examination to determine whether the signature is authentic, consistent with verified known exemplars of the individual's writing and within the range of natural variation of genuine signatures and handwriting. Handwriting elements examined included, but were not limited to, line quality, speed of writing, fluidity, size, relationship to signature line, placement online, and other unique identifying characteristics. Ms East opined that it is also necessary that these identifying characteristics are evident in a genuine, authentic signature and that there are no fundamental or unexplainable differences when compared with the questioned signature.



**[93]** According to Ms Beverley East's evidence, there are unique characteristics of the known signatures of Mr Conrad Campbell. These unique characteristics are as follows: -

- a. An open "o" connected angularly to the "n".
- b. An isolated "a" with a closed top and short stem, and a distinct capital "A".
- c. The "d" in the known signatures is proportionally smaller in both the base and stem.
- d. The common "a" in the last name connects angularly to the "m".
- e. There is a unique connection between the "b" and "e", in the last name.
- f. The "C" in the first name consistently reaches the highest crestline.
- g. Legible ending to the last name positioned above the baseline.

**[94]** Ms East also examined the differences in the questioned signatures and found as follows: -

- a. That the questioned signatures show significant inconsistencies in formation and crestline positioning compared to the known signatures.
- b. That variations are noted in the connection between the "o" and "n" in the first name.
- c. That the proportional size and shape of the "a" (both common and capital) differ between the known and questioned signatures.
- d. That there are notable differences in the formation of the "d" and the connection between the "a" and "m" in the last name.
- e. Inconsistencies in terminal endings, including spelling and line quality.

**[95]** The following evidence of Ms Beverley East bears repeating: -

*Q: Do you accept that an individual's signature may change over time?*  
*A: A signature changes all the time.*

*Q: The changes may depend on several factors?*  
*A: Yes.*

*Q: Those factors are such as age?*

*A: Not necessarily. That is a generalization.*

- Q: *Someone signing in their younger years, when they are now in their 80s there may be some change in how they sign.*
- A: *I do not accept that.*
- Q: *An individual's signature may very well change with age.*
- A: *I disagree.*
- Q: *The changes in a person's signature may also be dependent in changes in their habits and physical abilities.*
- A: *I accept that.*
- Q: *Would you accept that when conducting a handwriting examination, it is best practice to have more contemporaneously known documents when comparing questioned documents.*
- A: *I disagree. In the real world, yes it would be, but in the Caribbean region where I have worked for many years, documents are rarely available. We have learnt to work with whatever documents are available. I have been successful in three cases where no signatures were available for comparison. One size doesn't fit all. So, when you are generalizing, of course, but when you are looking at an individual signature, each case is granted differently, in my opinion.*
- Q: *You are still accepting that it is best practice to have more contemporaneous documents.*
- A: *I accept that, yes.*
- Q: *Would you accept that, in making a comparison, the accuracy of one's findings may very well be affected by how old the known documents are.*
- A: *I disagree.*
- Q: *The deviation from the best practice does not affect the accuracy of the finding?*
- A: *It is not a deviation. Best practices are guidelines for any expert.*
- Q: *Within the known signatures of Mr Campbell, there are a lot of variations?*
- A: *Yes, I agree.*
- Q: *Wouldn't you accept that no two known signatures are the same?*
- A: *I agree.*
- Q: *Based on the identifying characteristics that you highlighted in your report, as well as earlier in your examination in chief, some of the known features also vary from those identifying characteristics.*
- A: *I was able to find seven in all of the six known. That is habitual. You are always going to get variations in a signature. The variations are evident,*

*but I am able to identify habitual writing patterns. That is what determines the authenticity of a known signature.*

*Sugg: The sample size on which you relied was far too small.*

*A: I disagree. I relied on six known samples of signatures but within those six signatures there were habitual writing patterns, which are different from variations. Habitual handwriting patterns are consistent behaviour which identifies them as authentic.*

*Mr Campbell chose to sign an illegible signature on the Driver's Licence application form. The space could not have afforded him to sign with his full name.*

*Q: Do you accept that on the Will there was an abundance of space, both in width and height for Mr Campbell to sign?*

*A: Yes. I accept that.*

*Q: Did any of the other known documents come after 2003?*

*A: I made my opinion based on the documents from 1999 to 2003.*

*When I was given Mr Lesnevich's known signatures, I was able to find the same habitual writing patterns in other signatures that were in his report from that period of time, which stronger validates what I was saying without seeing those signatures.*

*Sugg: The conclusion that you drew was not arrived at concerning more contemporaneous documents.*

*A: I disagree.*

*Sugg: The differences between the known documents and the questioned documents are not significant differences but rather unaccounted variations in the samples.*

*A: I disagree.*

*Sugg: If you had conducted your report using a larger sample size, your finding would have been different.*

*A: I disagree.*

*Sugg: The findings of your report do not take into consideration all the relevant factors and that is why it is flawed.*

*A: I disagree."*

**[96]** Conversely, in his report, Mr Lesnevich identified the documents which he used during his analysis. These documents, labelled "K1", form part of the questioned documents associated with the lodgements at the NLA and include: -

- a. Letter to the Office of Titles with an incomplete date in 2017.
- b. Letter to the Tax Administration of Jamaica dated 6 January 2017.
- c. Letter to the Tax Administration of Jamaica dated 31 October 2016.
- d. Letter to the Jamaica Public Service Co. Ltd dated 25 July 2016.

**[97]** The use of these documents, which all relate to the same fraudulent transaction, undoubtedly compromise the accuracy of Mr Lesnevich's analysis. As such, any findings made from these documents must be viewed with caution, as they adversely impact the reliability of his conclusions. The purported Last Will and Testament of Conrad Campbell was used as a known signature when Ms Beverley East had determined that those signatures were not authentic.

**[98]** Mr Lesnevich was asked about his conclusion regarding the following characteristics: -

#1: "pictorial similarities"

#7: "height relationship"

#11: "proportions" and

#15: "strokes"

**[99]** In his responses, Mr Lesnevich attributed any observed differences between the known and questioned signatures to "variations" in the handwriting. This, despite the fact that his report concluded that these individual characteristics were the same between the signatures. In this regard, the report fails to account for the inconsistencies identified.

**[100]** The Court accepts the evidence of Ms Beverley East and finds that the Claimant, Mr Carlton Campbell, has proven the following on a balance of probabilities:

- i. the findings contained in the Expert Report of Ms Beverley East strongly supports the case of the Claimant, Mr Carlton Campbell, that the signatures on the documents which were submitted to the NLA and those on the Last Will and Testament of Mr Conrad

Campbell, are forgeries. These documents, though purported to have been signed by Mr Conrad Campbell, do not bear his authentic signature.

- ii. actual fraud occurred with the execution of the Transfer Instrument by someone other than Mr Conrad Campbell.
- iii. the documents which the Defendant, Mrs Jacqueline Willacy submitted to the NLA or caused to be submitted to the NLA, bore the signature of the sole proprietor of the subject property (the now deceased, Mr Conrad Campbell), which was forged to make it appear as similar as possible to that of the now deceased, Mr Conrad Campbell.
- iv. the Defendant, Mrs Jacqueline Willacy, derived her interest from a transfer by way of gift and ought not to be considered as a bona fide transferee for value.
- v. the Defendant, Mrs Jacqueline Willacy, cannot rely on the defence that the fraudulent circumstances resulting in her registration on the Certificate of Title in respect of the subject property were not known to her.
- vi. the Transfer Instrument No. 1878775, which is dated 3 March 2017, concerning the subject property, is fraudulent.
- vii. the transfer of the ownership of the subject property by the now deceased, Conrad Etwal Campbell, also known as Conrad E. Campbell, also known as Conrad Campbell, to the Defendant, Jacqueline Willacy, was fraudulent and was known by the Defendant, Jacqueline Willacy, to be fraudulent.

**DISPOSITION**

**[101]** It is hereby declared and ordered as follows: -

1. The trial of the matter is to proceed as though the matter were commenced by way of a Claim Form. The Fixed Date Claim Form, which was filed on 18 January 2023, is converted to a Claim Form and the affidavits filed for and on behalf of the parties are to be treated as the respective party's Statement of Case.
2. It is hereby declared that the Estate of Conrad Etwal Campbell, also known as Conrad E. Campbell, also known as Conrad Campbell, is the absolute owner of all that parcel of land part of Ironshore and Hartfield Estates situate near Montego Bay, in the parish of Saint James, being the Lot numbered Three Hundred and Eighty-Five, being the land comprised in Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles.
3. It is hereby declared that the transfer of the ownership of the said land, being the land comprised in Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, by the deceased, Conrad Etwal Campbell, also known as Conrad E. Campbell, also known as Conrad Campbell, to the Defendant, Jacqueline Willacy, was fraudulent and was known by the Defendant, Jacqueline Willacy, to be fraudulent.
4. The Transfer Instrument No. 1878775, which is dated 3 March 2017, concerning the said land, being the land comprised in Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, shall be rescinded.
5. The Defendant, Jacqueline Willacy, shall deliver up the Duplicate Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, with Survey Plan attached to the Registrar of the Supreme Court within twenty-one (21) days of the date hereof.

6. The Registrar of the Supreme Court is commissioned to transmit the said Duplicate Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, with Survey Plan attached to the Registrar of Titles within seven (7) days of the receipt of the same.
7. The Registrar of Titles shall cancel the Transfer Instrument No. 1878775, which is dated 3 March 2017, which is endorsed on the Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, by which all that parcel of land part of Ironshore and Hartfield Estates, situate near Montego Bay, in the parish of Saint James, being the Lot numbered Three Hundred and Eighty-Five, was transferred to the Defendant, Jacqueline Willacy.
8. In the event that the Defendant, Jacqueline Willacy, fails to deliver the said Duplicate Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles, with Survey Plan attached, to the Registrar of the Supreme Court, within the time stipulated in these Orders, the Registrar of the Supreme Court shall forthwith inform the Registrar of Titles and the Registrar of Titles shall cancel the said Certificate of Title registered at Volume 1074 Folio 457 of the Register Book of Titles and shall replace it by issuing a new Certificate of Title in the name of Conrad E. Campbell.
9. Costs are awarded to the Claimant, Carlton Campbell, against the Defendant, Jacqueline Willacy, and are to be taxed if not sooner agreed.
10. There shall be liberty to apply.
11. The Claimant's Attorneys-at-Law are to prepare, file and serve these Orders.