IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Probate Division

2023/PRO/cpr/00006

IN THE MATTER of The Estate of Renate Gruesser a.k.a. Renate Gruesser, late of Unit 403, Sunny Side Condominiums of Lyford Cay of the Western District of the Island of New Providence, one of the Islands of The Commonwealth of The Bahamas, Deceased.

B E T W E E N:

(1) MARCUS GRUESSER
(2) IRA HESS

Plaintiffs

AND

ROBERT PHELPS HERMAN

Defendant

Before: **The Hon. Madam Justice J. Denise Lewis-Johnson MBE**

Appearances: **Gail Lockhart-Charles K.C. with Tatyanna Maynard of Counsel for the Plaintiffs**
Darell Taylor of Counsel for the Defendant

Hearing Dates: **18th March 2025; 28th April, 2025, 7th May 2025, 9th May 2025**

Application to strike out – Rules of the Supreme Court – Probate and Administration of Estates Rules – Civil Procedure Rules – Should the Court accede to the application to strike out – Irregularity - Nullity – Fake cases – Use of Artificial Intelligence

RULING

INTRODUCTION

1. This is an application brought by way of Notice of Application filed on 3rd March 2025. The application sought to strike out the Plaintiffs' Writ of Summons and Statement of Claim due to procedural irregularities.

BACKGROUND

2. Marcus Gruesser and Ira Hess ("the Plaintiffs") in this application are the children of the late Mrs. Renate Gruesser ("the Deceased"). Robert Phelps Herman ("the Defendant") is the husband/ widower of the Deceased. The parties are in contentious probate proceedings before this Court. The Plaintiffs filed a Writ of Summons and Statement of Claim on 26th January 2023 alleging that the Deceased did not have the testamentary capacity to create the 2016 Will. The Defendant filed a Defence on 29th March 2023.

3. Counsel for the Defendant alleged that the filing of the Plaintiffs' Writ of Summons and Statement of Claim were not made in accordance with the Probate and Administration of Estates Rules, Ch. 108 ("the PAE") or the Civil Procedure Rules (2022) ("the CPR"). Specifically, the Plaintiffs failed to file a Fixed Date Claim form as mandated under the CPR or a Specially Indorsed Writ under the PAE Rules.

4. Further, the Plaintiffs did not file the accompanying documents indicated in the PAE Rules or the CPR including a statement of the nature of the interest of the parties in the estate of the deceased and a memorandum signed by the Registrar showing that the Writ [or statement of claim] were produced to him for examination and that two copies of the Will were lodged. Therefore, the Defendant contends that the Plaintiffs' claim is a nullity due to fatal procedural irregularities.

5. On 18th March 2025, the Court heard oral submissions from both Counsel in relation to the strike out application. The matter was adjourned to 28th April 2025 to allow Counsel for the Plaintiffs an opportunity to review the cases cited by the Defendant's Counsel. On 7th April 2025, the Court received a letter from Counsel for the Plaintiffs with regards to the application to strike out alleging that the authorities relied on by the Defendant's Counsel were "fake". Shortly thereafter, on 8th April 2025, Counsel for the Defendant submitted a letter to the Court denying the assertions made by the Plaintiffs' Counsel. The matter was heard on 28th April 2025.

DEFENDANT'S SUBMISSIONS

6. Counsel for the Defendant gave oral submissions on 18th March 2025 and written submissions were filed on 9th April 2025. In her written submissions, Counsel averred that the Plaintiffs failure to comply with Part 63.3 of the CPR and Rule 32 of the PAE Rules is not a mere technicality but a jurisdictional defect which cannot be cured by amendment or acquiescence.

7. Counsel relied, in her written submissions, on the Supreme Court decision of **Karshie Cooper v Dr. Winston Forbes [2021/PRO/cpr/FP/00006].** Counsel stated that the proceedings were dismissed as a nullity due to the failure to use the prescribed originating process. Justice Hanna Adderley ruled at paragraph 17 of the Ruling that:

> *"The document entitled 'Application for Revocation of a Grant' is not an Originating Summons nor is it a Writ of Summons. The deficiency/ irregularity cannot be cured by amendment... in contentious probate proceedings the PAE Rules govern procedure."*

8. Counsel further submits that the Plaintiffs reliance on a general Writ without the mandated form or endorsements mirrors the fatal defect as illustrated in *Karshie Cooper v Dr. Winston Forbes, supra.*

PLAINTIFFS' SUBMISSIONS

9. Counsel for the Plaintiffs referred this Court to the Court of Appeal decision of **Alexandra Henderson and Yamaha Motor Manufacturing Corporation of America and Yamaha Motor Co. Ltd. SCCivApp No. 153 of 2021** which made reference to the decision of Evans, J in **Moss v. Moss (In her capacity as Administrix of the Estate of the late Willard Nazi Moss) [2015] 2 BHS J. No. 114** specifically paragraphs 19 and 26:

> *"19. Milton Evans J., held that the mistakes and omissions made by the Plaintiff could be rectified without causing injustice to the Defendant and granted the Plaintiff relief pursuant to Order 2 rule 1(2) and ordered that a new Writ be produced for the Registrar for the appropriate action, and that the service of existing Writ and all proceedings be confirmed as valid.*
>
> *26. The Deputy Registrar considered herself bound by the judgment of Evans J in Moss v Moss (In her capacity as Administratrix of the Estate of the late Willard Nazi Moss) [2015] 2 BHS J No. 114 where he exercised his discretion to cure certain irregularities..."*

10. Counsel submits that it is far too late to take procedural points after steps have been taken in the matter and that the Court ought to in the interest of justice deal with the matter that is before it if it can be dealt with, without causing prejudice to the parties.

ISSUES

11. The issues for the Court's determination are:

    (a) Whether the Plaintiffs Writ of Summons and Statement of Claim should be struck out for non-compliance with the RSC and/ or the PAE Rules or can they be cured?
    (b) How should the Court treat the use of non-existent cases?

THE LAW

12. Order 68 (2) of the Rules of the Supreme Court ("the RSC") outlines the procedure with regards to commencing a probate action. This section provides:

> "(1)A probate action must be begun by writ, and the writ must be issued out of the Registry.
>
> (2) Before a writ beginning a probate action is issued it must be indorsed with --
>
> (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
>
> (b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of it have been lodged with him."

13. Additionally, Order 2 rules 1 (1) provides for non-compliance with the Rules.

> "1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein."

14. Furthermore, Rule 32 of the PAE Rules provides the application process regarding contentious probate matters. The rule provides:

> "32. A person who seeks to begin a contentious probate action must do so by writ issued out of the Registry and indorsed with —
>
> (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
>
> (b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of the will have been lodged with the Registrar."

15. Similarly, Part 63.3 of the CPR provides:

"63.3 (1) A person who seeks to begin a contentious probate action must do so by a fixed date claim form and statement of claim issued out of the Probate Registry and endorsed with —

(a) a statement of the nature of the interest of the claimant and of the defendant in the estate of the deceased to which the action relates; and

(b) a memorandum signed by the Registrar showing that the statement of claim has been produced to him for examination and that two copies of the will have been lodged with the Probate Registrar.

(2) Part 12 shall not apply in relation to a probate action."

16. Pursuant to Rule 2 of the CPR, the application of the Rules are:

(1) Subject to paragraph (4), these Rules shall —

(a) apply to all civil proceedings commenced in the Court on or after the date of commencement of these Rules;

(b) not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where —

(i) a trial date has not been fixed for those proceedings; or
(ii) a trial date has been fixed for those proceedings and that trial date has been adjourned.

17. Paragraph 2.1 of Practice Direction No. 9 of 2023 provides:

"2.1 The Rules apply to proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings."

DISCUSSION AND ANALYSIS

18. Counsel for the Defendant submitted that a Fixed Date Claim form should have been filed under the CPR or a specially indorsed Writ under the PAE Rules and that the Plaintiffs' failure to file such documents renders their application a nullity. It is important to note that this probate action was filed under the RSC on 26th January 2023, prior to the CPR coming into effect on 1st March 2023. A trial date was set for 28th April 2025.

19. It is clear from the RSC that certain documents are required to be filed along with a Writ of Summons in contentious probate actions. Those accompanying documents include a statement of the nature of the interest of both parties in the estate of the deceased to which the action relates and a memorandum signed by the Registrar showing that the Writ was produced to him for examination and that two copies of the Will were lodged with the Registrar. It is not in dispute that Counsel for the Plaintiffs failed to file the requisite

accompanying documents. As a result, the application to strike out the Writ of Summons and Statement of Claim was made by the Defendant.

20. I do not find the case of **Karshie Cooper v Dr. Winston Forbes**, helpful to this application. The application in that matter began by the filing of an Application for Revocation of a Grant. The Court in that matter at paragraph 15 opined:

> *"Considering that no grant has been given... I find that the Plaintiff has no standing to bring this action or any action... until such grant or a Preliminary Order has been given by the Court."*

21. In that case, the Court found that there was a procedural irregularity that could not be cured. In the present matter, the correct originating documents were filed however the proper procedure was not followed.

22. In the Supreme Court decision of **Gibson v Darling [1987] BHS J. No. 46** the then Chief Justice Georges stated at paragraph 10 of the judgment:

> *"10 In this jurisdiction attorneys are by no means diffident in seeking to have writs and statements of claim struck out on the basis that they disclose no cause of action or are an abuse of the process of the court. No such attempt was made in this case. A defence was filed and the matter continued until it was ripe for hearing. The failure to comply with order 68 rule 2 caused no injustice. It was a case in which the Registrar would have routinely issued the writ with the required memorandum."*

23. Similarly, in this matter, the Defendant filed a Defence to the Plaintiffs Writ of Summons. The application to strike out was filed almost two years after the Defence was filed in the probate action.

24. Chief Justice Georges in **Gibson v Darling, supra** made reference to the case of **Harkness v Bell's Asbestos and Engineering Ltd. [1967] 2 Q.B. 729** at p.735 – 6, in which Lord Denning M. R. stated:

> *"This new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the court can and should rectify so long as it can do so without injustice. It can at last be asserted that it is not possible for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in litigation."*

25. In the instant matter, the Court finds that this irregularity can be rectified as there will be no injustice to the parties in doing so. In **Moss v. Moss (In her capacity as Administrix of the Estate of the late Willard Nazi Moss) [2015] 2 BHS J. No. 114**, Justice Evans (as he then was) applied the approach considered in Gibson v Darling, supra. He stated,

"25 After a close review of the cases... and the dicta from Georges CJ in Gibson v Darling (supra) I am persuaded that the proper approach to the Rules as required by Order 2 is to regard every omission or mistake as an irregularity which the court can and should rectify so long as it can do so without injustice.

26 In considering the complaints raised... and assessing the omissions and mistakes identified by him I am not satisfied that any injustice has resulted to the Defendant and these infelicities can be rectified without causing any such injustice to the Defendant. Firstly, as was done by Georges CJ it would be appropriate to have the writ produced to the Registrar for her appropriate action..."

26. While Justice Evans did not indicate that the Writ of Summons needed to be re-submitted, at that point, to the Registrar with the statement and memorandum, he allowed for all of the documents filed thereafter to be validated. The Court does not see any injustice being done to the Defendant in allowing the irregularity to be rectified and subsequently the documents previously filed being validated. Therefore, the Court orders that the Writ of Summons be submitted to the Registrar to determine whether the Writ of Summons and Statement of Claim as filed on the 26 January 2023 would be issued a Memorandum signed by the Registrar and if so, the matter would proceed and all documents validated.

ISSUE 2: How should the Court treat the use of non-existent cases?

27. During oral submissions for the application to strike out, Counsel for the Defendant relied on five cases, it was determined that three of them were non-existent, plainly stated they were "fake cases." These were **Kelly v Rolle [2016] BHS J No. 9; Petrie v Dowling [1992] 1 WLR 1017;** and **Ladmat Ltd v Backo [2002] UKPC 16.**

28. During the oral submissions, the Court and Plaintiffs' Counsel inquired if there were written submissions that Defence Counsel could lay over. Counsel provided a document which she called her speaking points and agreed to lay over formal submissions in April. While cases were referred to and relied on, copies of these cases were not provided to the Court or Counsel opposite.

29. It was agreed that the Plaintiff would have an opportunity to respond to the submissions. The response in most part brought us to this point. I will quote the finding of Mrs. Gail Lockhart-Charles, K.C.:
    1. ***"Ladmat Ltd v Backo [2002] UKPC 16*** *– This case does not exist. The citation leads to an unrelated decision (CVC/Opportunity Equity Partners Ltd & Anor v Almeida), which concerns shareholder disputes and fraudulent misrepresentation. No Privy Council, in Ladmat Ltd v Backo, held that "a fundamental defect in the commencement of proceedings cannot be waived." This is entirely untrue, and the reference is to a fabricated authority.*
    2. ***Petrie v Dowling [1992] 1 WLR 1017*** *– This citation is fabricated. Our research indicates that the case titled Petrie v Dowling originates from Australia and pertains to recovery of damages for nervous shock. However, the Defendant's counsel falsely asserted that this case supports the proposition that participation*

in a proceeding does not cure a void act or confer jurisdiction where none exists – a blatant misrepresentation.

3. ***Kelly v Rolle [2016] 2 BHS J No. 9*** *– This case does not appear on either the Bahamian Court of Appeal or Bahamian Supreme Court websites. The citation actually leads to an unrelated decision (Hall v The Attorney General), which has no bearing on the current matter."*

30. The Court conducted its own research and also found that the authorities above do not exist.

31. At the trial on 28 April 2025, the Court asked Defence Counsel to provide copies of the cases used in her oral submissions. Counsel advised the Court that she used ChatGPT and that she could no longer find the cases as the links were not available. By email during luncheon break Counsel wrote:

> *"Dear Madam Justice Lewis- Johnson,*
> *I reference my letter of response to the court dated 8th April, 2025,and once again reiterate that they were only a part of my speaking points and had yet to be verified.*
>
> *However, kindly find attached the emails received from my assistant, who did the research on the submissions and speaking points. In locating the cases found in his research, attached are two versions of the case of* ***Kelly v Rolle*** *generated from his ChatGPt research. The cases appear to be litigated sources with actual written decisions.*
>
> *The following cases were not found when we conducted a second search of the links provided by ChatGPT -*
> *2. Petrie v. Dowling [1992} 1 WLR 1017*
> *3. Ladmat Ltd v. Backo [2002] UKPC 16 N0. 9."*

32. In response to the Court asking Counsel about her use of ChatGPT, Counsel stated "There is no restriction on the use of ChatGPT." On being asked if she was aware of the international courts response to the use of Artificial Intelligence Hallucination (made up cases), Counsel unapologetically told the Court she was prepared to retain Counsel to defend herself before the Ethics Committee.

33. The Court accepts that there is no legal or ethical restriction on the use of ChatGPT or any other Artificial Intelligence (AI) tool by attorneys. However, Counsel is duty bound to verify that the case law cited and relied upon to the Court is accurate, real, that they exist. Counsel is duty bound to verify the authenticity of the case, that citations are correct, that quotes used are factual and truthful, that the Court is in no way mislead. In this case Counsel wholly failed on all accounts.

34. The advancement of fictitious cases to the Court may very well amount to contempt of court. While the court appreciates that workloads may impact time allotted for research and thus modern research engines such as ChatGPT can assist counsel, they must be used so as not to mislead the Court by the advancement of AI Hallucinations. As helpful a legal research tool it may be, this case shows how very dangerous it could be if not properly used. I am hopeful that this case will serve as a warning and guide to others and such instances will be reduced. Attorneys remain bound by their oath and are governed by their code of ethics. As stated by Justice James in **Nexgen** *"the integrity of the justice system relies on diligence, honesty and professional accountability."*

35. In the case of **Stephanie Wadsworth et al v Walmart Inc. and Jetson Electric Bikes, LLC, Case No. 2:23-cv-00118-KHR** from the United States District Court for the District of Wyoming, the Plaintiffs Attorney was ordered to show cause why there should not be sanctions or disciplinary action. The Court explained the concept of "AI Hallucinations."

> *"A hallucination occurs when an AI database generates fake sources of information. To explain how this occurs:*
> *AI models are trained on data, and they learn to make predictions by finding patterns in the data. However, the accuracy of these predictions often depends on the quality and completeness of the training data. If the training data is incomplete, biased, or otherwise flawed, the AI model may learn incorrect patterns, leading to inaccurate predictions or hallucinations."*

36. In the case of **Wadsworth** above and the Trinidadian case of **Nexgen Pathology Services Limited v Darceuil Duncan CV 2023-04039** the offending Counsel immediately took full responsibility for the use of the "fake cases." They acknowledged the error, was forthcoming about the use of AI and in **Wadsworth**, Counsel withdrew the Motions in limine, paid opposing Counsel's fees for defending the Motions in limine and "implemented policies, safeguards and training to prevent another occurrence." This was not Counsel's response in this case. Counsel sought to distinguish between her oral submissions to the Court which she calls "talking points" and the written submissions. She continued to assert that she was free to use it and there was no legal or ethical restriction on its use.

37. The Court does not accept that there is a difference between the oral and written submissions. In fact, had there not been a request by the Plaintiff to respond, the Court would have ruled on the oral submission and such ruling could have significantly relied on the submissions of Defence Counsel. The implications are severe and serious when the Court cannot accept Counsel's assertion to be truthful and cases to be real. The risk of harm to the integrity of the judicial process is real and could bring the system into disrepute.

38. The damage of fake cases was discussed in an article called "AI hallucinations on trial" by Catherine Ramnarine, published in the Trinidad & Tobago Guardian, she advanced the following:

"The opposing party wastes time and money attempting to confirm their existence. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus authorities..."

39. It is unfortunate that Ms. Darell Taylor Counsel for the Defendant was adamant throughout the hearing of this issue that she did nothing wrong. Even after Mrs. Lockhart-Charles K.C. made a passionate plea for leniency and that this could have been an error, mistake and or lapse in judgment, Ms. Taylor remained silent when given an opportunity to respond and or adopt the plea. It was only in her written submissions on the non-existent cases that she profusely apologized, but failed to acknowledge her verbal communication to the Court of those cases are equal to written submissions.

40. The Court does not accept Ms. Taylor's submission that the fictitious cases were verified before layover and that they were only used in speaking points and were "not intended to form the official record." I find there is no distinction between the speaking points, oral submissions and written submission. They are all submissions advanced by Counsel intended for the Court to rely on them in the process of decision making. The purpose of which was to guide a judgment in your client's favour. The attempt to draw such a distinction is one without merit and the Court rejects same without more.

41. Noting that fictitious cases used in the oral submissions on the 18 March 2025, Ms. Taylor went back to the poison well on the 28 April 2025 and submitted to the Court a case **Kelly v Rolle SCCIV App No. 23 of 2015**, which stated the hearing date was 17 February 2016 and the panel consisted of Justices Conteh, Crane-Scott and Jones. Justice Conteh retired 19 November 2015 and therefore could not have heard a matter on the 17 February 2016. Further, File/Case Number 23 of 2015 is Valentino Yustare v Regina.

42. The Court does not accept the argument of Ms. Taylor that the fictitious cases were not "central" to her application. If they were real, they were paramount to her application and would have been highly persuasive to this Court. The issue at hand now is one of the ethical obligation of Counsel to the Court.

43. Justice Westmin R. A. James in **Nexgen Pathology Services Limited** supra, stated:

"68. The Court recognizes that errors can and do occur, even at the judicial level, as evidenced by the appellate process. However, the submission of fictitious or unverifiable legal authorities, whether sourced from generative AI tools or carelessly obtained from the internet, constitutes a serious breach of professional responsibility. Attorneys bear an ethical obligation to ensure that all materials submitted to the Court are authentic, properly sourced, and reliable. The Court must be able to place trust in the representations made by Counsel as officers of the Court.

69. The Court acknowledges that digital tools including AI and internet-based platforms, are increasingly common and valuable in legal research; indeed, this Court itself makes use of such tools where appropriate. However, their use must be accompanied by discernment and subjected to rigorous verification. This is because AI-generated content is susceptible to producing what are commonly referred to as "hallucinations": fabricated, yet plausible-sounding outputs that may result from gaps or limitations in the model's underlying data. Legal practitioners must not rely on such tools uncritically. Any information obtained through these means must be independently verified before being presented to the Court.

70. The Court emphasizes that citing non-existent cases, even inadvertently, constitutes a serious abuse of process and professionalism. It risks misleading the Court, prejudicing the opposing party, and eroding public confidence in the administration of justice...."

44. I am of the view that when Counsel makes submissions to the Court, they are certifying that the requisite inquiries have been made as to the authenticity of the cases. The reasonable standard of performance by Counsel has been met in accordance with ethical code of conduct. Law Libraries and digital platforms for legal research remain available for verification of cases, the additional work must be done by Counsel.

45. The office of Counsel and Attorney at Law is an ancient and noble one, steeped in the tradition of legal research and oration. That is your calling, it is expected that counsels, citations and quotes in the face of the Court and in submissions are to be accepted as factual without more, this is your basic duty to the Court, your clients and to yourself.

46. Counsel's first duty is to the Court, never to mislead it and always act with honesty and integrity. This case highlights the increasing use of AI in the practice of law. As with any research tool and modern technology, the individual using it has an obligation to do so responsibly, to be diligent and verify the accuracy of the information being relied on. Regrettably, that was not done here and the Court is now forced to have this matter referred to the Ethics Committee of The Bahamas Bar Association for hearing and determination based on the Code of Ethics.

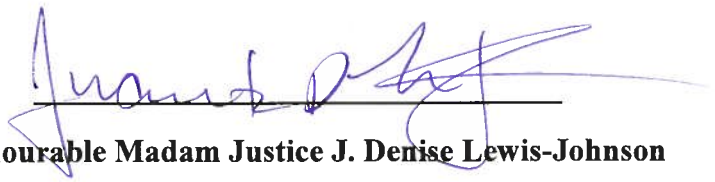
CONCLUSION

47. Having considered the relevant legislation and the authorities, the Court finds as follows:

1. The Writ of Summons and Statement of Claim filed the 26 January 2023 will not be struck out;
2. The Writ of Summons and Statement of Claim are to be submitted to the Registrar to determine if a Statement of Interest of the parties and a Memorandum would be signed;

3. Upon the Registrar signing and approving the memorandum and statement of inerest, then all documents filed are validated. The irregularity in procedure can be rectified, as no injustice will be caused to the Defendant;
4. The matter of the use of non-existent case is referred to the Ethics Committee of The Bahamas Bar Association, for investigation and determination;
5. The Defendant is to pay the Plaintiffs' cost associated with this application, to be accessed by the Registrar if not agreed.

Dated the 1st day of August, A.D., 2025



The Honourable Madam Justice J. Denise Lewis-Johnson