COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PROBATE DIVISION

2021/PRO/cpr/00016

IN THE ESTATE OF EDMUND A. KNOWLES, Deceased

BETWEEN

JEHAN WALLACE

(Executrix named in the Will of the late Edmund A. Knowles)

Claimant

AND

JOSEPH J. MOXEY

(Attorney by Deed of Power of Attorney for Marquette K. Knowles-Brooks)

Defendant

Before: The Honourable Justice Darron D. Ellis

Appearances: Arlene Horton Strachan for the Claimant

K. Mone Moxey for the Defendant

Hearing Dates: 11th July 2024, 15th July 2025

Executors-Administrators-Wills-Probate-Attestation of Will-Fraud or Undue Influence-Whether will properly executed- Onus of Proof on party contesting will- Whether signature is that of the Deceased–Handwriting Expert–Attesting witnesses–Section 5 Wills Act, 2002–Section 31 of the Probate and Administration of Estates Rules, 2011-Suspicious Circumstances.

The Claimant, in her capacity as Executrix named in the will of the Deceased dated December 24 2019, instituted these proceedings against the Defendant, alleging that the Deceased died testate and that the Letters of Administration granted to the Defendant be revoked and that the will be accepted as the last will and testament of the Deceased.

HELD: Preferring the evidence of the Defendant, including her expert witness, to that of the Claimant and her witnesses and finding that there were suspicious circumstances and that the signature on the will is not of the Deceased, the Deceased therefore died intestate.

1. If a will, on the face of it, appears to be duly executed, the presumption is in favour of due execution, applying the principle *omnia praesumuntur rite esse acta*: **Re Denning, Harnett v Elliott** [1958] 2 All ER 1; **Sherrington and others v Sherrington** [2005] EWCA Civ 326; **Barry v Butlin** (1838) 2 Moo PC 480; **Fuller v Strum** [2002] 1 FCR 608; **Couser v Couser** [1996] 3 All ER 256 **Halsbury's Laws of England** (4th ed., Vol. 50, paras. 312–315); referred to.

2. The presumption of due execution will prevail unless there is evidence to rebut the presumption: **Lucky v Tewari** (1965) 8 W.I.R 363; **Sherrington and others v Sherrington** [2005] EWCA Civ 326; **In Re Collicutt Estates** (1994) 128 N.S.R.(2d); **Vout v Hay [1995]** 2 S.C.R 876; **Mona Maria McKenzie-Culmer v William Taylor and Another** [2020] 1 BHS J No 77; **Rolle v Ferguson** [2013] 2 BHS J No 12; **Lyle Ethrin Adderley and Lyric Ethan Adderley v Michael Duran Adderley** [2020] 1 BHS J No. 8; **Tyrrell v Painton [1894] P 151** referred to.

3. The evidence presented by the Defendant and her expert witness was more credible than that of the Claimant's witnesses and was strong enough to rebut the presumption of due execution: **Lucky v Tewari** (1965) 8 W.I.R 363; **Sherrington and others v Sherrington** [2005] EWCA Civ 326; **In Re Collicutt Estates** (1994) 128 N.S.R.(2d); **Vout v Hay [1995]** 2 S.C.R 876; **Lyle Ethrin Adderley and Lyric Ethan Adderley v Michael Duran Adderley** [2020] 1 BHS J No 8; **Tyrrell v Painton [1894] P 151** relied upon.

4. Additionally, the Court's suspicions were raised regarding the circumstances surrounding the making of the will. The Claimant failed to dispel these doubts: **Fulton v Andrew** (1875) LR 7 HL 448; **Fuller v Strum** [2002] 1 FCR608 and **Lucky v Tewari** (1965) 8 WIR 363 relied upon.

5. The fact that the expert witness based her analysis on photocopies and not originals does not render her evidence unauthentic. The copies were very good, clear and sufficient for her to make a proper analysis: **Lockheed-Arabia v Owen** [1993] QB 806 relied upon.

Ellis J

JUDGMENT

[1.] The Claimant claims by Specially Endorsed Writ of Summons filed April 12, 2021 and subsequently amended and filed November 24, 2021. The Claimant is seeking an order revoking the Letters of Administration granted to Joseph J. Moxey as Attorney by Deed of Power of Attorney for Marquette K. Knowles-Brooks (the Defendant) on February 19, 2021. The Claimant is also seeking a declaration that the said Letters of Administration are null and void, and lastly that a probate of the alleged last will and testament of the Deceased be granted to the Claimant.

[2.] The Defendant opposes the claims of the Claimant and contends that the Deceased died intestate while counterclaiming for reimbursement of funeral expenses. The Defence filed countered that the will is not the last will and testament of the Deceased because the signature on the will is not that of the Deceased.

Introduction and Background Facts

[3.] Most of the facts which I now state are uncontroverted and agreed. To the extent that there is any departure from the agreed facts, then what is expressed must be taken as positive findings of fact.

[4.] The Claimant is the niece of the Deceased and the named executrix in the will of the Deceased. The Defendant is the Attorney by Deed of Power of Attorney for Marquette K. Knowles-Brooks, the heir apparent and daughter of the Deceased, who died 15th September 2020.

[5.] Upon the death of the Deceased, the Defendant queried with the family of the Deceased as to whether the Deceased left a will. As the Defendant's queries were confirmed in the negative, an application was made in action No. 2020/PRO/npr/0526 for Letters of Administration due to the Deceased dying intestate. Letters of Administration were issued on February 19, 2021.

[6.] The Claimant filed a Writ of Summons on April 12, 2021, alleging that the Deceased left a will dated December 24, 2019, of which she was the Executrix. This purported will at paragraph two stated :

> *[2] I give and bequeath unto my children Kevin Alexander Knowles and Angelica Miriam Symone Knowles my bank account at Teachers and Salaried Workers Co-operative Credit Union as joint tenants and absolutely;*
>
> *[3] I give and bequeath all the rest residue and remainder of my estate both real and personal whatsoever nature and wheresoever the same may*

be situate unto my children Kevin Alexander Knowles and Angelica Miriam Symone Knowles, as joint tenants in fee simple and absolutely.

[7.] At the time of the making of the will, the Deceased had a living wife with whom he resided and a living biological daughter (the Defendant). The will disinherited both.

[8.] On May 9, 2021, the will was presented for probate, at which time the Claimant was advised that Letters of Administration were granted to the Defendant on February 19, 2021.

[9.] The Deceased was a cancer survivor for which he had surgery sometime in 1990. Since then, he used a device to aid with communicating, as he underwent a tracheostomy. Prior to his death, the Deceased lived with his wife on East Street South. The Deceased died on September 20, 2020, at the age of seventy-two (72).

The Issues

[10.] The key issues to be determined in this action are:

- Whether the purported will of the Deceased, dated December 24, 2019, is valid?
- Whether the purported will was drawn under suspicious circumstances?

Evidence

[11.] At trial, the following witnesses gave evidence on behalf of the Claimant: the Claimant, Michael Horton and Gerard Horton. For the Defendant, Dianne Peterson and Marquette Brooks testified.

Evidence of the Claimant

Jehan Wallace (the Claimant)

[12.] The Claimant testified that she is the niece of the Deceased and that she regularly visited him during his lifetime, although she never met the Defendant. She stated that she commenced these proceedings after submitting the Deceased's will for probate and being informed that it could not be probated because letters of administration had already been granted to the Defendant. The Claimant further testified that the will was executed by the Deceased on December 24, 2019 and duly witnessed by two persons approximately nine months before his death. The Letters of Administration were granted to the Defendant on February 19, 2021.

[13.] According to the Claimant, the beneficiaries named in the will are the Deceased's two lawful children, Kevin and Angelica Knowles. She further asserted that the Defendant's application for letters of administration contained several inaccuracies, including the omission of the said two children. The Claimant also alleged that the Defendant caused the electricity supply to the Deceased's home to be disconnected. Finally, she testified that the Deceased's handwriting deteriorated in tandem with his declining health.

[14.] Under cross-examination, the witness acknowledged that she was never entrusted by the Deceased to conduct business on his behalf. She stated that her aunt, who is also her attorney, informed her prior to the Deceased's death that she had been named as executrix under his will. The witness further testified that her two cousins, Kevin and Angelica, the children of the Deceased, were the beneficiaries of the will. She admitted, however, that they were not the Deceased's biological children. The witness also stated that she had heard they were adopted but had not seen any documentation confirming this.

[15.] Under further cross-examination, it became apparent to the Court that portions of the witness's evidence were hearsay, including allegations of harassment and the claim that the Defendant caused the electricity to the Deceased's home to be disconnected.

[16.] The witness also testified that the Deceased suffered from several health conditions, including multiple strokes and cancer, and that his voice box had been surgically removed, after which he communicated using an electronic device.

[17.] The witness struggled to identify who took instructions for the preparation of the will, stating only that she believed it was the Deceased's wife, who had predeceased him. Counsel for the Defendant suggested that this indicated that the will was not a true reflection of the Deceased's intentions.

[18.] The witness further testified that she neither attended the Deceased's funeral nor contributed to the funeral expenses, notwithstanding that she was named as Executrix. She also admitted that she did not provide the funeral home with a copy of the will. It was further put to her that the will itself directed her to attend to the funeral arrangements and that her failure to do so was because no valid will existed at that time, which the witness denied.

Michael Horton

[19.] Michael Horton, a senior member of the Bar with over forty-five years of practice, was one of the attesting witnesses to the Deceased's will. He testified that he was well

acquainted with the Deceased, having acted as his legal adviser on numerous occasions. On December 24, 2019, Mr Horton attended at the Deceased's residence together with his brother, Gerard Horton, where he observed the Deceased read and then sign his will at the foot or end thereof. Mr Horton confirmed that at the time of execution, the Deceased was suffering from several medical conditions, including multiple strokes and oesophageal cancer.

[20.] Under cross-examination, counsel for the Defendant challenged the witness on the authenticity of his signature, suggesting that he had not actually signed the will, as his name appeared merely printed rather than written in his usual stylised form. Mr Horton admitted that the will did not bear his customary signature, explaining that he had instead written out his name in full, as he often does when attesting to wills. It was further put to him that, in such circumstances, anyone could have written his name.

[21.] Counsel then drew his attention to his witness statement, on which he had used his stylised signature rather than simply printing his name as done on the will. When asked why he had signed like that on the witness statement, the witness replied that it was "for clarity." When pressed as to why the same was not done on the will, he responded only that he "did what was necessary."

[22.] Mr Horton also confirmed that the Deceased's wife was his sister. The Court observed that the witness appeared evasive and hesitant when counsel asked whether, had the Deceased predeceased his sister, she would have had a claim to his assets. He eventually conceded that, at the time the will was executed, the Deceased's wife was still alive. It was then put to him that he was asking the Court to accept that he had witnessed a will executed by his brother-in-law, which excluded his own sister. The witness further testified that the attorney who drafted the will was also his sister and that she is serving as counsel for the Claimant. He also admitted that he had not executed an affidavit of attesting witness in respect of the will.

Gerard Horton

[23.] Gerard Horton testified that he had known the Deceased for approximately forty-three years, the Deceased having been married to his sister, Miriam D. Horton-Knowles, who predeceased him in March 2020. He stated that on December 24, 2019, he attended the Deceased's residence, having been invited by the Deceased and his sister to witness the execution of their respective wills. Mr Horton recounted that he observed the Deceased, together with his brother, Michael Horton, read and sign his will on that occasion.

[24.] Under cross-examination, Mr Horton was initially unable to say who had drafted the will of the Deceased. Upon further questioning, he stated that the documents had been

brought to them by his brother, Michael Horton. The witness's evidence conflicted in part with that of his brother, as he initially stated that his sister was a beneficiary under the Deceased's will and that the Deceased was likewise a beneficiary under his sister's will; however, he later retracted this statement. He further admitted that he did not actually hear the Deceased read the will, but assumed from the Deceased's demeanour that he had done so. Counsel for the Defendant also drew his attention to an inconsistency in his testimony, where he stated he had no interest in the will, but after being prodded, he admitted that the beneficiaries of the will are his niece and nephew.

[25.] It is noteworthy that the Claimant's witnesses did not provide any evidence identifying who drafted the will or who took instructions from the Deceased for its preparation.

Defendant's Evidence

Dianne Peterson

[26.] Dianne Peterson is a court-qualified Document Examiner and Handwriting Expert in the field of questioned documents in the United States. She has received professional training in the examination, comparison, analysis, and identification of handwriting; the discrimination and identification of writings; the detection of altered numbers and documents; handwriting and trait analysis; and the examination of signatures. Ms Peterson has over 20 years of experience in the field and has provided expert evidence in numerous courts in the United States and Canada, as well as before the Supreme Court of Grand Bahama.

[27.] Ms Peterson was instructed to review certain documents in order to determine whether the signature appearing on the purported will of the Deceased was authentic. In doing so, she examined and compared the questioned signature of the Deceased against a number of known or undisputed comparison documents.

[28.] In her testimony, Ms Peterson described her profession as that of a Forensic Document Examiner and outlined her credentials, including having handled over 900 cases and given expert evidence on 29 occasions. She was formally deemed an expert without objection from counsel for the Claimant.

[29.] The witness explained that the work of a forensic document examiner involves the scientific examination, comparison, and analysis of documents to establish their authenticity, detect any alterations, additions, or deletions, and identify or eliminate individuals as the source of handwriting. She further stated that such work may include

determining the origin of machine-produced documents, restoring legibility where required, and preparing technical reports to support expert testimony in judicial proceedings.

[30.] The witness was asked and answered:

(1) Q. As a forensic document examiner, do you use a theory to evaluate your handwriting specimen?

A. Yes, handwriting identification is based on the principle that each person's handwriting is unique. There is variation in style, and they distinguish one person's handwriting from another. The process of identifying carefully and systematically uses unified methods and forensic science to identify unknown samples.

(2) Q. Can you explain what you were asked to do in this matter before the court today?

A. Yes, in this case, I was asked to determine if the signature of Edmund A. Knowles (on the will) was his writing to identify if he wrote the questioned signature or not.

[31.] Ms Peterson stated that her examination used the "ACE" method, which stands for Analyse, Compare, and Evaluate. She clarified that this approach is widely accepted as the standard in forensic document analysis and is employed by the FBI, U.S. Treasury Department, and U.S. Postal Service in their questioned document labs. Additionally, the American Society for Testing and Materials (ASTM) endorses this method as the official standard discipline.

[32.] Ms Peterson further stated that she was provided with three known specimens of the Deceased's signature for comparison: a passport signature dated December 12, 2005, a letter dated February 12, 1979, and a letter dated July 6, 1991. She confirmed that she compared these known specimens with the signature appearing on the purported will of the Deceased. Based on her examination, Ms Peterson concluded that the signature on the will displayed significant and fundamental differences from the known signatures and, in her expert opinion, was probably not written by the Deceased.

[33.] Under cross-examination, Ms Peterson was asked why she had relied on photocopies of the Deceased's signatures rather than the original documents. She explained that she had requested the originals but was only supplied with copies. Counsel further questioned her as to whether it was possible that the three comparison signatures were not

written by the same person. Ms Peterson rejected that suggestion, stating that the three known signatures exhibited consistent and distinguishing characteristics with one another, which were not present in the signature appearing on the will.

Marquette Brooks (The Defendant)

[34.] The Defendant testified that she is the biological daughter of the Deceased and that he was buried on October 21, 2020. She stated that on October 23, 2020, she attended the offices of Joseph Moxey and executed a Power of Attorney authorising her attorney to apply for a grant of Letters of Administration in respect of the Deceased's estate. The Letters of Administration were subsequently issued on February 19, 2021. She further testified that in or about May of that year, she received a copy of a purported will of the Deceased and, together with known samples of his signature, submitted them to a forensic document examiner for analysis. The witness stated that her father had suffered strokes in December 2015 and April 2016 and was thereafter unable to write. She also recalled specifically asking her father whether he had ever adopted any children, to which he replied that he had not.

[35.] Under cross-examination, the witness admitted that she resides in the United States of America but stated that she remained in frequent communication with her father. She added that, following his strokes, she travelled to visit him approximately every three months.

Submissions of the Claimant

[36.] Counsel for the Claimant submitted that the purported will of the Deceased was executed in full compliance with the formal requirements of the Wills Act, 2002 of The Bahamas. Reliance was placed on sections 3 to 5 of the Act, which provide that a valid will must be in writing, signed by the testator (or by another person in his presence and by his direction) at the foot or end thereof, and attested by two witnesses present at the same time.

[37.] It was argued that these statutory formalities were duly satisfied in the present case. Both attesting witnesses, Michael and Gerard Horton, testified that they witnessed the Deceased sign the will and that each signed the attestation clause in his presence and in the presence of the other. Counsel further contended that section 6 of the Act—which governs wills having foreign elements—had no application to the circumstances of this case.

[38.] In support of the submission that the will met the statutory requirements, counsel referred to **Couser v Couser** [1996] 3 All ER 256, where the English court held that section 9 of the Wills Act *1837* (which is *in pari materia* with section 5 of the Bahamian Act) was

enacted as a safeguard against fraud by requiring that a will be signed by the testator and attested by two witnesses. Counsel submitted that the same safeguard was observed in the present matter.

[39.] Counsel also contended that attempts by the Defendant to discredit the witness Michael Horton were without merit. It was argued that Mr Horton consistently maintained, even under cross-examination, that the signature appearing on the document was his and that he had signed as an attesting witness in the presence of the Deceased. Counsel submitted that his evidence was credible and should be accepted by the Court.

[40.] Counsel further submitted that although the Deceased's signature on the will appeared to be little more than a "scrawl," this was readily explained by his health condition, as both parties accepted that the Deceased had suffered multiple strokes. It was argued that the Deceased's weakened physical state accounted for the irregular appearance of his signature, but that he nevertheless signed the document personally and intentionally. Counsel contended that the handwriting expert's inability to express a definitive opinion on the extent to which illness might have affected the Deceased's handwriting should not diminish the credibility of the attesting witnesses, whose testimony consistently confirmed that the Deceased executed the will.

[41.] Reliance was also placed on **Halsbury's Laws of England** (4th ed., Vol. 50, paras. 312–315), where it is stated that the statutory requirement is simply that the testator's signature be made or acknowledged in the presence of two or more witnesses, and that those witnesses, in turn, sign in the presence of the testator. There is, counsel observed, no legal requirement that the attestation clause adopt any particular form or wording. Accordingly, the Defendant's challenge to the form of Mr Horton's signature as a witness was said to be immaterial to the validity of the will.

[42.] Reference was further made to section 5(3)–(4) of the **Wills Act, 2002**, which provides that a person is a competent witness if he attests the will by signing his name in his own handwriting. Counsel submitted that this statutory requirement was satisfied on the evidence before the Court and that, in consequence, the will was formally valid.

[43.] Counsel for the Claimant also relied on **Mona Maria McKenzie-Culmer v William Taylor and Another** [2020] 1 BHS J No 77, in which a will was upheld notwithstanding evidence that the testator had suffered from multiple medical conditions. It was submitted that, similarly, the Deceased's illness in the present case did not preclude testamentary capacity or the proper execution of his will.

[44.] Counsel argued that both attesting witnesses in the present case gave consistent and credible accounts that fully satisfied the statutory requirements of attestation. Counsel also invoked the common-law presumption *omnia praesumuntur rite et solemniter esse acta*—

that all acts are presumed to have been done rightly and regularly—citing again the decision in **Couser v Couser** [1996] 3 All ER 256. It was submitted that where a will appears valid on its face, a substantial evidential burden rests on those seeking to impugn it. Counsel contended that the will before the Court was valid, and that collateral matters such as who brought the will to the Deceased's residence or who drafted it were immaterial to the question of its formal validity.

[45.] In conclusion, counsel for the Claimant submitted as follows:

- That the will of the Deceased was duly executed in accordance with the requirements of the **Wills Act, 2002**;
- That the Defendant's defence was frivolous and vexatious, and that the Defendant had failed to discharge any burden of proving invalidity;
- That the expert handwriting evidence was unreliable, as the comparison specimens spanned a period of more than forty years and therefore could not accurately reflect the Deceased's handwriting at the time of execution; and
- That the will represented a valid document embodying the Deceased's true testamentary intention.

[46.] Counsel accordingly urged the Court to reject the Defendant's evidence, to admit the will to probate in solemn form, and to award costs to the Claimant.

Submissions of the Defendant

[47.] Counsel for the Defendant relied on the well-established principle articulated by *Baron Parke* in **Barry v Butlin** (1838) 2 Moo PC 480, namely that the burden of proof rests upon the party propounding a will to satisfy the Court that it was duly executed by a free and capable testator. It was submitted that, in the present case, the Claimant has failed to discharge that burden.

[48.] The Defendant's case rested principally on the expert handwriting evidence of Mrs Peterson, who, upon comparing the disputed signature on the alleged will with undisputed specimens of the Deceased's handwriting (derived from government identification and employment documents), concluded that it was probable that the writer of the known signatures did not write the questioned signature. Mrs Peterson identified specific divergences—such as wavering lines, poor line quality, pen lifts, smaller loops, and "C-shaped" formations absent from the Deceased's genuine handwriting—and accordingly opined that the signature on the will was not that of the Deceased.

[49.] Counsel emphasised that Mrs Peterson's report and *viva voce* testimony remained unshaken under cross-examination, and that the Claimant called no expert evidence in rebuttal. The criticisms directed at the expert's methodology were deemed unfounded and inconsistent with the recognised professional standard, which permits an examiner to proceed with analysis even where contemporaneous samples are limited.

[50.] It was further argued that the expert's reference specimens were of reliable provenance. In contrast, the alternative documents suggested by the Claimant were of doubtful authenticity and would not have been accepted by any competent examiner. The Defendant therefore invited the Court to attach full weight to the expert's opinion that the signature on the will was not genuine.

[51.] Counsel also referred to **Lyle Ethrin Adderley and Lyric Ethan Adderley v Michael Duran Adderley** [2020] 1 BHS J No 8, in which a will was declared invalid after expert evidence established that the testator's signature had been forged. It was contended that the present case is on all fours with that authority: the will was not signed by the Deceased, no contrary expert evidence was adduced, and the instrument therefore failed to comply with section 5 of the Wills Act, 2002.

[52.] In addition to the expert evidence, the Defendant highlighted the suspicious circumstances surrounding the making of the will. Citing **Tyrrell v Painton** [1894] P 151 **and Lucky v Tewari** (1965) 8 WIR 363, counsel submitted that where a will is prepared or witnessed by persons closely connected to the beneficiaries, and where natural objects of the testator's bounty are excluded, the burden shifts to the propounder to prove knowledge and approval. It was argued that the Claimant failed to discharge that burden.

[53.] Counsel specifically noted that the will was drafted by the aunt of the two beneficiaries, witnessed by the beneficiaries' uncles, and appointed as executrix the beneficiaries' cousin, none of whom were blood relatives of the Deceased. The will simultaneously disinherited the Deceased's wife and only biological daughter, the Defendant, with whom he had maintained regular contact. These inter-family connections, coupled with the Deceased's frail health, were said to give rise to a real suspicion that the Deceased neither knew nor approved of the will's contents.

[54.] Counsel further contended that the testimonies of the Claimant and her witnesses were inconsistent and unreliable. The Claimant admitted to having only limited familiarity with the Deceased and conceded that she had never managed or conducted his affairs. She also gave uncertain, hearsay-laden answers under cross-examination, including regarding the alleged adoption of the beneficiaries and the origins of the will itself. It was submitted that her evidence revealed a lack of personal knowledge and internal inconsistency.

[55.] The two attesting witnesses, Michael and Gerald Horton, were described as conflicted and contradictory. Counsel highlighted that Michael Horton initially denied any knowledge of the Deceased's affairs but later claimed long familiarity with his signature. He also gave evasive answers concerning the rights of the Deceased's wife and the existence of the supposed "mutual wills." Gerald Horton's testimony, meanwhile, conflicted with Michael's as to who brought the will to the Deceased's home and the circumstances of its execution. Counsel submitted that these inconsistencies demonstrated that the witnesses were unreliable and that their accounts could not be reconciled.

[56.] The Defendant's counsel further contended that the timing of the alleged will's emergence undermined its authenticity. The document was not produced at the time of the Deceased's death or funeral and only surfaced after the Defendant had been granted letters of administration. Counsel argued that this sequence of events suggests the will was an afterthought, introduced to defeat the lawful administration of the estate.

[57.] Counsel further drew attention to apparent irregularities in the attestation itself. The signature of Michael Horton on the will bore no resemblance to the signature he used on his subsequent witness statement. Given his long experience as an attorney, it was implausible that he would sign in a markedly different form on a document of such importance—particularly one involving his own relatives. This discrepancy, it was argued, reinforced the Defendant's contention that the attestation process was irregular and unreliable.

[58.] In summary, counsel submitted that:

- The Deceased's only child, the Defendant, was his lawful heir;
- There was no reliable evidence that the Deceased was able to write after his 2016 stroke;
- The expert evidence established that the Deceased did not sign the will:
- The Claimant's witnesses were inconsistent and self-interested; and
- The alleged will emerged only after the estate had been administered, further undermining its credibility.

[59.] Accordingly, counsel invited the Court to find that the document dated December 24, 2019, purporting to be the last will and testament of Edmund A. Knowles, was not executed by the Deceased, was surrounded by circumstances of grave suspicion, and is therefore null and void. The Court was urged to exercise its discretion to uphold and confirm the letters of administration previously granted to the Defendant.

The Law

[60.] **Section 5 of The Wills Act, 2002, Chapter 115** ("the Act") deals with the formalities for the execution of a will. It provides as follows:

> **"Subject to section 6, no will is valid unless it is in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction in accordance with subsection (2).**
>
> **The signature of the testator or other person mentioned in subsection (1) is effective if –**
>
> **(a)so far as its position is concerned it satisfies subsection (3);**
>
> **(b) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and**
>
> **(c) each witness either –**
> **(i) attests and signs the will; or**
> **(ii) acknowledges his signature, in the presence of the testator (but not necessary in the presence of any other witness),**
>
> **but no form of attestation is necessary nor is publication of the will necessary.**
>
> **(3) So far as regards the position of the signature of the testator, or of the person signing for him –**
>
> **a. a will is valid if the signature is so placed at, after, following, under, beside or opposite the end of the will that it is apparent on the face of the will that the testator intended to give effect, by the signature, to the writing signed as his will;**

[61.] Simply put, the statutory requirements for the execution of wills in The Bahamas are:

a. The will must be in writing;

b. It must be signed by the testator or by some other person in his presence and under his direction;

c. It must appear that the testator by his signature intended to give effect to the will;

d. The signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

e. Each witness must either attest and sign the will, or acknowledge his signature in the presence of the testator, but not necessarily in the presence of any other witness.

Presumption of Due Execution/ Burden of Proof

[62.] If a will appears to be properly executed on the face of it, the presumption is in favour of due execution, applying the principle *omnia praesumuntur rite esse acta* as per **Re Denning, Harnett v Elliott** [1958] 2 All ER 1. Furthermore, the English Court of Appeal case of **Sherrington and others v Sherrington** [2005] EWCA Civ 326 supports the principle that when a will bears the signatures of the deceased and witnesses along with an attestation clause, the presumption of proper execution will stand unless there is the strongest evidence to rebut it.

[63.] The burden of proof lies with those seeking to establish the will, as stated by *Lindley LJ* in **Tyrrell v Painton** [1891-94] All ER Rep 1120 :

> **"I will refer to a passage in Barry *v Butlin* (1). There Parke, B, says that the rules of law according to which cases of this nature are to be decided are two, which he proceeds to state as follows:**
>
> > **"The rules of law according to which cases of this nature are to be decided do not admit of any dispute so far as they are necessary to the determination of the present appeal, and they have been acquiesced in on both sides. These rules are two: The first, that the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded in the last will of a free and a capable testator. The second is, that if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favor of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased."**

[64.] **Lucky v Tewari** (1965) 8 W.I.R 363 provides:

> "That when the will has been read over to a capable testator on the occasion of its execution that is sufficient proof that he approved of, as well as knew the contents of the will."

[65.] With respect to suspicious circumstances involving wills, the case of **Laszlo v Lawton** 2013 BCSC 305, the Supreme Court of British Columbia examined **Vout v Hay [1995]** 2 S.C.R 876 and the principles surrounding suspicious circumstances and stated:-

> 2. "[202] In discharging its burden of proof, the propounder is aided by a rebuttable presumption. It is presumed that the testator possessed the requisite knowledge and approval and testamentary capacity where the will was duly

executed in accordance with the statutory formalities after having been read by or to the testator, who appeared to understand it. Vout clarified that this presumption may be rebutted by evidence of well-grounded suspicions, known as "suspicious circumstances", relating to one or more of the following circumstances: (1) surrounding the preparation of the will; (2) tending to call into question the capacity of the testator; or (3) tending to show that the free will of the testator was overborne by acts of coercion or fraud (para. 25).

3. [203] The presumption places an evidentiary burden on the party challenging the will to adduce or point to "some evidence which, if accepted, would tend to negative knowledge and approval or testamentary capacity": Vout at para. 27.

4. [204] Where suspicious circumstances arise, the presumption is said to have been spent, meaning it does not apply and has no further role to play, and the propounder reassumes the legal burden of establishing both approval and capacity. Proving testamentary capacity as well as knowledge and approval of the will provision necessarily entails dispelling the suspicious circumstances that have been raised: see generally, **Ostrander v. Black** (1996), 12 E.T.R. (2d) 219 at 235 (Gen. Div.).

5. [205] The usual civil standard of proof, namely proof on a balance of probabilities, applies. That said, as a practical matter the extent of the proof required will be proportionate to the gravity of the suspicion, which will vary with the circumstances peculiar to each case: Vout at para. 24."

Factual Findings and Analysis

[66.] The starting point for the Court's determination in this matter is the seminal passage from the opinion of the Privy Council delivered by *Baron Parke* in **Barry v Butlin** (1838) 2 Moo PC 480 at 482–483:

> "The rules of law according to which cases of this nature are to be decided, do not admit of any dispute, so far as they are necessary to the determination of the present Appeal: and they have been acquiesced in on both sides. These rules are two; the first that the onus probandi lies in every case upon the party propounding a Will; and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable Testator.
>
> The second is, that if a party writes or prepares a Will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true Will of the deceased."

[67.] *Baron Parke* went on to explain what is meant by the onus probandi in that context. He said this, at pages 484-6:

> "The strict meaning of the term onus probandi is this, that if no evidence is given by the party on whom the burthen is cast, the issue must be found against him. In all cases the onus is imposed on the party propounding a Will, it is in general discharged by proof of capacity, and the fact of execution, from which the knowledge of and assent to the contents of the instrument are assumed, and it cannot be that the simple fact of the party who prepared the Will being himself a Legatee, is in every case, and under all circumstances, to create a contrary presumption, and to call upon the Court to pronounce against the Will, unless additional evidence is produced to prove the knowledge of its contents by the deceased. A single instance, of not unfrequent occurrence, will test the truth of this proposition. A man of acknowledged competence and habits of business, worth £100,000, leaves the bulk of his property to his family, and a Legacy of £50 to his confidential attorney, who prepared the Will: would this fact throw the burthen of proof of actual cognizance by the Testator, of the contents of the Will, on the party propounding it, so that if such proof were not supplied, the Will would be pronounced against? The answer is obvious, it would not. All that can truly be said is, that if a person, whether attorney or not, prepares a Will with a legacy to himself, it is, at most, a suspicious circumstance, of more or less weight, according to the facts of each particular case; in some of no weight at all, as in the case suggested, varying according to circumstances; for instance the quantum of the Legacy, and the proportion it bears to the property disposed of, and numerous other contingencies: but in no case amounting to more than a circumstance of suspicion, demanding the vigilant care and circumspection of the Court in investigating the case, and calling upon it not to grant probate without full and entire satisfaction that the instrument did express the real intentions of the deceased.

[68.] Paragraph 70 of **Fuller v Strum** [2002] 1 FCR 608 provides further guidance:

> "70. If the first limb of the rule identifies the person propounding the will as the person on whom the burden of proof lies, it is the second limb which informs the court as to the nature of the inquiry which it is to make. What, then, is the standard of proof which the court must require in that inquiry? There is, to my mind, nothing in the statement the law by the Privy Council in Barry v Butlin which suggests that the standard of proof required in relation to knowledge and approval in a probate case is other than the civil standard - that is to say, that the court must be satisfied, on the balance of probability, that the contents of the will do truly represent the testator's intentions. Indeed, it seems to me that it is to that standard that Baron Parke was referring when he spoke of the court being "judicially satisfied". Nor do I think that there is anything in Fulton v Andrew to suggest that the standard is other than the civil standard."

Burden of Proof and Governing Principles

[69.] The law is clear that the responsibility for proving the validity of a will—known as the onus probandi—rests on the party seeking to have it admitted to probate. This party must establish not only that the will was duly executed, but also that the testator possessed the requisite testamentary capacity and had knowledge and approval of the contents of the will. This approach is supported by longstanding case law, including **Barry v Butlin** (1838) 2 Moo PC 480 and **Tyrrell v Painton** [1894] P 151.

[70.] Once it has been demonstrated that the will was properly executed and that its terms appear rational on their face, the burden may shift. At this stage, those challenging the will must provide evidence to substantiate claims of fraud, undue influence, or the testator's lack of capacity.

[71.] However, where the preparation or attestation of the will occurs under suspicious circumstances—for example, when the drafter, witnesses, and beneficiaries are closely connected—the initial burden does not shift. In such cases, the party propounding the will must dispel the court's suspicions by presenting clear, affirmative evidence that the testator knew and approved the contents of the will and that it represents their true intentions. This principle is established in cases such as **Fulton v Andrew** (1875) LR 7 HL 448 and **Lucky v Tewari** (1965) 8 WIR 375.

[72.] Having heard the witnesses and the submissions of the parties, the Court's suspicions were aroused with respect to the making of the will. The case of **Fuller v Strum** offers guidance in this regard, where the learned judge wrote at paragraph 32:

> 32. Probate proceedings peculiarly pose problems for the court because the protagonist, the testator, is dead and those who wish to challenge the will are often not able to give evidence of the circumstances of the will. The doctrine of "the righteousness of the transaction" whereby the law places a burden on the propounder of the will, in circumstances where the suspicion of the court is aroused, to prove affirmatively that the deceased knew and approved of the will which he was executing, is a salutary one which enables the court in an appropriate case properly to hold that the burden has not been discharged.
>
> 33. But "the righteousness of the transaction" is perhaps an unfortunate term, suggestive as it is that some moral judgment by the court is required. What is involved is simply the satisfaction of the test of knowledge and approval, but the court insists that, given that suspicion, it must be the more clearly shown that the deceased knew and approved the contents of the will so that the suspicion is dispelled. Suspicion may be aroused in varying degrees, depending on the circumstances, and what is needed to dispel the suspicion will vary accordingly. In

> the ordinary probate case knowledge and approval are established by the propounder of the will proving the testamentary capacity of the deceased and the due execution of the will, from which the court will infer that knowledge and approval. But in a case where the circumstances are such as to arouse the suspicion of the court the propounder must prove affirmatively that knowledge and approval so as to satisfy the court that the will represents the wishes of the deceased. All the relevant circumstances will be scrutinised by the court which will be "vigilant and jealous" in examining the evidence in support of the will (*Barry v Butlin* (1838) 11 Moo PC 480 at p. 483 per Parke B.).

[73.] It is instructive to consider the decision of *Lloyd J* in **Hart v Dabbs** (unreported, 6 July 2000), which illustrates the objective approach the Court must take when its suspicion has been aroused. In that case, the propounder of the will—who was alleged to have unlawfully caused the testator's death—was both executor and sole residuary legatee, having played an active role in preparing and arranging the execution of the will without professional assistance. There was no evidence that the testator drafted the will, gave instructions for it, or read it before signing. Nevertheless, Lloyd J admitted the will to probate, finding that knowledge and approval could be inferred from the surrounding circumstances. The attesting witnesses confirmed that the will was duly executed and that the Deceased understood he was signing his will. The provisions were straightforward, and the Deceased appeared alert and independent. Despite the suspicious context, the Court held that the evidence was sufficient to establish that the testator knew and approved the contents of the will.

[74.] Further, the court is mindful of the long-established principle, as reaffirmed in **Barry v Butlin** (1838) 2 Moo. P.C. 480 at 482, which dictates that when circumstances arise that excite the suspicion of the Court, the Court should not pronounce in favor of the will unless it is fully convinced that the instrument presented genuinely reflects the intentions of the Deceased. This foundational concept was articulated by Baron Parke, who emphasised that the court's satisfaction must extend beyond mere formalities and address any doubts raised by suspicious circumstances. The Court must be judicially satisfied that the will truly reflects the testator's wishes before admitting it to probate. Baron Parke stated:

> "If a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court, and the court ought not to pronounce in favour of the will unless that suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased."

[75.] That principle has been reaffirmed in many cases, more recently in **Re Key (Deceased)** [2010] EWHC 408 (Ch). The effect is not to reverse the burden of proof, but to require the propounder, once such circumstances are shown, to produce affirmative evidence sufficient to satisfy the conscience of the court that the will represents the free and informed testamentary act of the testator.

[76.] Suspicion could be aroused in varying degrees, and depending on the circumstances, what is needed to dispel the suspicion would vary accordingly. In **Fuller vs Strum**, the testator and the executor went into a bedroom where the will was executed, leaving 30% of the testator's disposable assets to the executor. The Court held that the actions aroused the Court's suspicion, but at a very low level.

[77.] I also referred to *Winder J's* (as he then was) decision in **Moss and Moss and another** 2013/CLEgen/00398, where the attorney attended to the testator in a hospital bed. After questioning him, she proceeded to have him execute his will. Again, the Court found that there were suspicious circumstances in the execution of the will.

[78.] In **Devillebichot (deceased) Brennan v Prior and others** (2013) All ER (D) 243 (Sep), the Court found as suspicious the fact that the will was drawn by members of a family who stood to benefit under it.

[79.] Having had the opportunity to see and hear the witnesses, to observe their demeanour, and to consider the evidence of the expert witness, I find the evidence advanced by the Defendant and the expert to be more plausible and credible than that of the Claimant's witnesses.

[80.] I find the Defendant and Mrs Peterson to be forthright, consistent, and credible. Their evidence was detailed, measured, and coherent. The Defendant, who the Court accepts as the Deceased's only child, gave clear and consistent testimony that her father was unable to write following his stroke and that they maintained a close relationship until his death. She explained that she visited him approximately every three months after he became unable to communicate by text or telephone due to his medical condition.

[81.] The Defendant's expert was accepted without opposition as duly qualified to give expert evidence. The expert's report, which was comprehensive and methodologically sound, compared the signature appearing on the disputed will with multiple known specimens of the Deceased's signature. The expert observed distinctive features in the Deceased's handwriting—such as extended loops, compact angular forms, and continuous pen movement—that were absent from the signature on the will. Conversely, the signature on the will exhibited poor line quality, breaks, pen lifts, and altered formations.

[82.] The expert witness concluded that it was probable that the Deceased did not sign the will in question. The Court accepts this as a professional and cautious expression of opinion, consistent with accepted forensic standards and practices. Although measured in

language, the expert's conclusion clearly conveys that the disputed signature is unlikely to be that of the Deceased.

[83.] The Claimant adduced no expert evidence in rebuttal and did not challenge Mrs Peterson's comparative methodology in any material respect. The criticisms raised during cross-examination primarily addressed form rather than substance and did not undermine the cogency of the experts' analysis. I therefore attach substantial weight to the expert's conclusion.

[84.] By contrast, the Claimant's witnesses were evasive and defensive, particularly when questioned about their familial relationship to the beneficiaries and the circumstances surrounding the preparation of the will.

[85.] The Claimant's witness, Michael Horton, though an experienced attorney, appeared at times evasive and inconsistent. His evidence concerning the Deceased's condition and the circumstances of the will's execution was vague. The second witness, Gerald Horton, contradicted his brother on key details, including who brought the will to the Deceased's home. Their explanations for these discrepancies were unsatisfactory. The Court finds both men barely credible and their evidence somewhat unreliable.

[86.] Additionally, no evidence was adduced regarding the drafting of the will. The drafter was not called, and no witness spoke to how the Deceased gave instructions or expressed his testamentary intentions.

[87.] This case is replete with circumstances that arouse suspicion. The signature appearing on the will differs materially in its formation, pressure, and line quality from the Deceased's signatures on contemporaneous documents. The Defendant's handwriting expert highlighted the absence of the Deceased's characteristic looped formations and the presence of hesitant pen lifts, which are inconsistent with the Deceased's normal writing habits.

[88.] Furthermore, the involvement of family members in drafting and attesting the will creates a clear potential for conflict and undue influence. The will, according to the Claimant's witness, was drafted by counsel for the Claimant, who is the sister of both attesting witnesses, who is also the aunt of the named executrix and the beneficiaries. Counsel for the Claimant is also the sister of the Deceased's wife. The two attesting witnesses—both brothers of counsel for the Claimant and of the Deceased's wife—were therefore the uncles of the beneficiaries.

[89.] Additionally, the will disinherited the Deceased's wife and biological daughter, even though the evidence indicated that their relationship with the Deceased remained in good standing. No evidence was presented as to who took instructions for drafting the will,

when those instructions were given, or who explained the will to the Deceased. Moreover, the will described the beneficiaries as the Deceased's "children," yet the evidence before the Court established that they were not his biological offspring. There was also no evidence of any legal adoption by the Deceased.

[90.] Furthermore, the will emerged only after the Defendant had obtained letters of administration and commenced administering her father's estate. The timing of its appearance, coupled with the extensive familial involvement in its preparation and execution, raises grave doubts about its authenticity.

[91.] The Claimant, as the propounder of the will, bore the heavy burden of dispelling the suspicions surrounding its execution. She failed to do so. Her evidence was uncertain and primarily consisted of hearsay. She conceded that she had never managed the Deceased's affairs and had only minimal contact with him. Her testimony did not satisfy the Court that the Deceased knew and approved the contents of the alleged will.

[92.] These circumstances fall squarely within the class of cases described in **Barry v Butlin** (1838) 2 Moo PC 480, which call for the Court's most vigilant scrutiny. The issues highlighted were fully ventilated at trial. The propounder was aware that the authenticity of the signature and the independence of the drafting process were in dispute and was afforded every opportunity to address them in evidence and submissions. The Court therefore proceeds to determine the matter on the evidence as adduced.

[93.] Even if the Deceased's signature could somehow be accepted, I am not satisfied that the Deceased possessed the requisite testamentary capacity or that he knew and approved the contents of the document. The evidence from all parties established that between 2015 and 2019, the deceased suffered from significant health impairments, including multiple strokes and throat cancer, which left him unable to write or speak clearly. The evidence was also unclear about when, how, and by whom the instructions for drafting the will were given.

[94.] The evidence of the attesting witnesses did little to dispel these concerns. Both men were brothers of the attorney who drafted the will and uncles of the beneficiaries. They testified that the Deceased looked at the document and signed it. Yet, neither could explain how the Deceased communicated his understanding of the will or conveyed his instructions for its preparation. Their evidence lacked independence, detail, and credibility.

[95.] By contrast, the Defendant—the Deceased's only child—gave clear and consistent evidence that her father was unable to write following his stroke and that they maintained a close and affectionate relationship until his death. There was no credible explanation as to why the Deceased would have disinherited his only child and the wife with whom he

was living, in favour of collateral relatives by marriage. Such an outcome would be inconsistent with both logic and the natural order of familial affection.

[96.] The Claimant's submission that the will conforms on its face with the statutory requirements of the **Wills Act, 2002**, cannot withstand scrutiny. The presence of two witnesses and a signature is not determinative where, as here, there exist compelling grounds to doubt that the Deceased executed the will or understood its contents.

[97.] The Defendant's submissions, by contrast, are firmly grounded in both law and evidence. The expert testimony, the well-founded suspicions regarding the Deceased's capacity, the improbability of disinheritance, and the interconnectedness of all persons involved in the will's creation together satisfy the Court that the Claimant has failed to discharge the burden of proof required under the circumstances.

[98.] Having carefully reviewed the totality of the evidence, the Court's suspicions were aroused, and the Court is not satisfied that those suspicions have been dispelled. The propounder has not demonstrated, on a balance of probabilities, that the Deceased knew and approved the contents of the will or that it represented his true testamentary intention. The combination of the uncontroverted expert evidence—that the signature on the will is probably not that of the Deceased—the extensive involvement of interested family members in its preparation and attestation, and the corroborative testimony of the Defendant leaves the Court's conscience unassuaged.

[99.] In this regard, I rely upon **Fuller v Strum**, where the Court of Appeal held that expert language expressing likelihood was sufficient to justify the rejection of a will when corroborated by supporting evidence.

Conclusion

[100.] I find that the alleged will was executed under circumstances of grave suspicion. The total absence of independence in the process, combined with the Deceased's serious illness, the will's disinheritance of the Deceased's wife and daughter, places a heavy evidential burden on the Claimant.

[101.] The expert handwriting evidence—unchallenged by any other expert—demonstrates convincingly that the signature appearing on the document is not that of the Deceased. That evidence alone is sufficient to defeat the Claimant's case.

[102.] Moreover, the Deceased's medical condition may have rendered it improbable that he could have comprehended or executed the will. The evidence that he merely looked at the document before signing it falls far short of establishing knowledge and approval in the present circumstances.

[103.] On a balance of probabilities, I further find as follows:

i) The will dated December 24, 2019, was not executed by the Deceased, Edmund A. Knowles;
ii) The will was prepared and witnessed under circumstances of grave suspicion which have not been dispelled;
iii) The Claimant has failed to prove that the document represents the Deceased's true testamentary intention.

[104.] The application to revoke the Letters of Administration granted to the Defendant is **dismissed**. The said **Letters of Administration are confirmed** and shall remain in full force and effect. Costs are awarded to the Defendant, to be summarily assessed if not agreed.

Dated this 25th day of November 2025

Darron D. Ellis
Justice