IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 01053 of 2023

IN THE MATTER of s. 24 and the First Schedule of The Inheritance Act 2002 Chapter 116 of the Statute Laws of The Bahamas

AND IN THE MATTER of the Last Will and Testament of Harold Anthony Cole dated 25th day of October A.D., 2018

BETWEEN

JOYCE BANNISTER-COLE

Claimant

AND

TORAH ANITA CAMILLE COLE
(one of the Executors of the Estate of Harold Anthony Cole deceased who died on 28th day of April A.D., 2019)

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Ms Tanya Wright for the Claimant
Mr. Nicholas Mitchell for the Defendant

Hearing Date: 14 November, 2024
Submissions received: 14 November, 2025

Practice and Procedure — Strike Out Application — Civil Procedure Rules 2022, Part 26 — Testamentary Construction — Wills Act, s.20 — Surviving Spouse — Statutory Right of Occupation — Inheritance Act 2002 — Matrimonial Home — Whether Claim Bound to Fail — Threshold for Summary Disposal — Triable Issue Identified - Specific devise vs. general devise — Inheritance Act (Bahamas) exclusion of surviving spouse's occupation right where dwelling-house specifically devised to child

RULING

[1.] Torah Cole (referred to interchangeably as "Miss Cole" or the Defendant), one of the Executors of the estate of her late father, Harold Cole and step-daughter of Joyce Bannister-

Cole (referred to interchangeably as "Mrs. Bannister-Cole" or the Claimant), applied to strike out the Originating Application on the basis that her father's will disposed of the entirety of his estate to his children, leaving no entitlement to the Claimant. The Claimant, the surviving spouse, asserted a statutory right of occupation of the matrimonial home situated at No. 5 Lancaster Road under the Inheritance Act 2002, independent of the will.

Held: The application to strike out was refused. The Claimant's statutory contention raised a triable issue not suitable for summary disposal. Pursuant to CPR 8.19(1), the proceedings are ordered to be converted to continue as if commenced by standard claim form. In consequence of that conversion and in the exercise of the Court's case management powers, the Defendant is directed to file an Acknowledgment of Service within five (5) clear days of the delivery of this written ruling. No separate application for extension of time is required in the circumstances. Matter to proceed by way of further case management. No order is made as to costs.

Background

[2.] Mrs. Bannister-Cole commenced this action by Originating Application filed on 14 November, 2023 against Miss Cole, her step-daughter, one of the executors of the estate of Harold Anthony Cole, her late husband. She sought several reliefs including:

(i) a declaration as to whether on a true construction of the section 24 and the First Schedule of the Inheritance Act 2002 Chapter 116, the Universal Gift Devise and Bequest contained in the Last Will and Testament of Harold Anthony Cole dated 25 October, 2018 and set out below is a specific devise for the purposes of the said Act:

> "I Give Devise and Bequeath all of my real estate and all of my personal estate whatsoever situate and of whatever kind not hereby otherwise disposed of unto my said children, Torah Anita Camille Cole and Paul Anthony Cole in fee simple as tenants in common and in equal shares absolutely;

(ii) an order that the Defendant is to account to the Claimant for the proceeds of the sale of the former matrimonial home situated at No. 5 Lancaster Road on the island of New Providence

(iii) an order that the Defendant, appropriate the interest in the proceeds of the sale of the said former matrimonial home in or towards satisfaction of the Claimant's life estate in the said matrimonial home.

[3.] Mrs. Bannister-Cole's Originating Application is supported by an affidavit also filed on the same date (hereinafter referred to as the "First Affidavit").

[4.] In the First Affidavit of the Claimant she explained that she is the widow of Harold Cole and that they were married on 31 December 2005 and remained so up until his date of death on 28 April, 2019. She said that she resided in the Lancaster Road Property during their marriage and she continued to reside there after his death. While she admitted to having returned to Canada on two occasions after her husband's death in 2019 and 2020, she did eventually return to The Bahamas and further, that she left personal items including furniture, art and other chattels in the Lancaster Road Property. After her return from the first trip, she explained that Miss Cole advised her that the locks had been changed and provided her with a new set of keys. She returned to Canada for a second visit however, she said that she did not express or suggest that she was leaving The Bahamas permanently or as she put it "*abandoning the place my husband and I called our home.*" She had this to say regarding her extended stay in Canada on her second trip there:

> 11. I left The Bahamas in or around June-July 2020 when the Covid-19 restrictions began to loosen for travel. It was my intention to stay again only for a few months to visit with my siblings however, I unfortunately contracted Covid-19 not once but twice. The Bahamas had implemented strict Covid-19 protocols and I decided there was no need to rush back home. Thereafter, Canada also implemented strict Covid-19 protocols. These factors combined contributed to the delay in my return to The Bahamas.
>
> 12. It was not until sometime around or before November 2022, while in Canada, that I had a suspicion that the Defendants were intending on selling the matrimonial home. Neither one of them communicated this directly to me."

The Application

[5.] By Notice of Application filed on 9 November, 2024 Miss Cole:

(1) made an application for:

(a) an Order that the Originating Action filed by the Claimant on 14 November, 2023 (the "Action") seeking declaratory and other relief be struck out and such or set aside in its entirety;

(b) In the alternative an Order that the Action as far as it pertains to the rights prescribed, defined, or otherwise set out in the First Schedule of the Inheritance Act, 2002 be struck out and/or set aside;

(c) An Order for costs of these proceedings in favour of the Defendant to be taxed if not agreed with interest running thereon from the date of any such order until paid

(2) The Defendant brought this application pursuant to Part 26 of the Civil Procedure Rules 2022 (the "CPR"):

[6.] The application is supported by an affidavit of Miss Cole filed on 12 November, 2024.

[7.] Miss Cole in her affidavit in support did not dispute the following facts as contained in the First Affidavit of Mrs. Bannister-Cole:

(i) That Mrs. Bannister-Cole and her father were married.
(ii) That they remained married up until his date of death.
(iii) That they resided in the Lancaster Road Property.
(iv) That Mrs. Bannister-Cole left for Canada after her father's death in August, 2019 (Mrs. Bannister-Cole did not provide a date when she left, however, she admitted in her First Affidavit that she left 3-4 months after her husband's death for a vacation in Canada where she visited with her siblings at the family property).
(v) That she provided Mrs. Bannister-Cole sometime in or about January, 2020 with a set of keys to access the Lancaster Road Property upon being advised by her that she was coming back to The Bahamas.
(vi) That Mrs. Bannister-Cole left The Bahamas for Canada sometime in or around the month of July 2020 having been held back due to the Covid-19 restrictions.
(vii) That after Mrs. Bannister-Cole left The Bahamas in July 2020 she did not return until after November, 2022. (Mrs. Bannister-Cole in her First Affidavit did not address when she returned however, she admitted that she was still in Canada in November, 2022)

[8.] In the remainder of the affidavit Miss Cole said that:

(i) Mrs. Bannister-Cole remained out of the country and hence out of the Lancaster Road Property from July 2020 to April, 2023.
(ii) That prior to the house being sold there was an estate sale to sell off items which had remained in the home. During this process items belonging to Mrs. Bannister-Cole were sold and the proceeds given to her niece or their collection arranged by her niece of some of the items. Miss Cole admitted that she was unaware whether the funds were passed over or the items returned to Mrs. Bannister-Cole by her niece.
(iii) That Mrs. Bannister-Cole was never evicted from the Lancaster Road Property.
(iv) That she made no contributions to the home while Miss Cole's father was alive, it was all taken care of by her father.

(v) That Mrs. Bannister-Cole returned to The Bahamas in April 2023 which was a few days after the home had been sold.

(vi) That her brother reached out to Mrs. Bannister-Cole to offer her some money, not because of any entitlement, however, she did not respond at all to the offer.

[9.] Mrs. Bannister-Cole filed a second affidavit on 24 January, 2025 and an affidavit of Anne Williams also on the same date.

[10.] In the second Affidavit, Mrs. Bannister-Cole set out her position as the surviving spouse of Harold Anthony Cole and challenged the conduct of Miss Cole in her role as executor. Mrs. Bannister-Cole maintained that she never abandoned the matrimonial home, leaving most of her belongings behind and intending always to return. She disputed Miss Cole's assertions that she removed household items or failed to reside there, and she described Miss Cole's actions in changing locks, denying her access, and selling household contents without consultation as wrongful and oppressive.

[11.] Further, Mrs. Bannister-Cole alleged that Miss Cole influenced her father to alter his earlier will, excluded Paul Cole from inheriting the home, and that she maneuvered to obtain sole probate by persuading her co-executor to renounce. She contended that Miss Cole failed to notify her of her statutory rights, disregarded her life interest in the property, and acted unilaterally in disposing of estate assets. She recounted instances of hostility and threats from Miss Cole, which caused her fear and discomfort, contrasting this with her own devotion to her husband and contributions to the upkeep and improvement of the home.

[12.] She also recalled that her late husband Harold Cole had discussed with Miss Cole the possibility of purchasing her life estate for $100,000, but no agreement was finalized before his illness. Mrs. Bannister-Cole maintained that she was entitled to reside in the home for her lifetime and that Miss Cole's assumptions and actions were unlawful.

[13.] I refer to what she had to say which I believe captured the essence of her claim against Miss Cole:

> *"I never abandoned the place that I called home. The Defendant owed me the respect of the wife of her late father to honor him by not mistreating me."*
>
> *"She simply steam rolled over my rights as the surviving spouse of my deceased husband with whom I resided up to the time of his death."*

[14.] Ms. Williams explained that she had been hired to assist with the care of Mr. Cole after he had become bedridden after having sustained a stroke. She noted that prior to her agreeing to assist with Mr. Cole's care that he was attended to by Mrs. Bannister-Cole and Miss

Cole. She expressed concern for the things that Miss Cole said that led her to be concerned for Mrs. Bannister-Cole's safety including that she would *"push her down the stairs and send her back home in a wheelchair".* On the other hand, she said that Mrs. Bannister-Cole did not act in any negative way towards Miss Cole and was always a sweet and peaceful woman in her presence. She said that after one week that she could no longer work for her and that after she had left the job she had reached out to Mrs. Bannister-Cole via WhatsApp messages and voice notes to warn her to be careful.

[15.] Miss Cole filed a second affidavit filed on 18 February, 2025 in which she responded to the affidavit of Anne Williams ("Williams Affidavit") and to the second affidavit of Mrs. Bannister-Cole. (the "second Bannister-Cole Affidavit").

[16.] Miss Cole first addressed the Williams Affidavit noting that she had been briefly employed as a caregiver for Harold Cole but was terminated at his request due to poor performance. Miss Cole denied ever making threats against Mrs. Bannister-Cole, including the alleged statement that she would push her down the stairs, and rejected claims of aggressive gestures. She characterized Ms. Williams' assertions as retaliatory following her dismissal.

[17.] In response to the second Bannister-Cole Affidavit, Miss Cole reaffirmed her earlier statements contained in her first affidavit. She insisted that Mrs. Bannister-Cole had in fact packed and removed household items, including furniture and appliances, and even sold or gave away certain items. She denied persuading the co-executor to renounce, stating that Bishop Laish Boyd had independently chosen to step aside. She explained that she had changed the locks in 2019 for safety reasons, not to exclude Mrs. Bannister-Cole, and claimed she had personally provided keys upon her return. Miss Cole disputed the allegation that she had denied access to the home, asserting that no request for access had ever been made. She noted that the property had been sold in March 2023. She also challenged Mrs. Bannister-Cole's characterization of Paul Cole's outreach as vague, stating that Paul had acted as co-owner of the home.

[18.] On the issue of the will, Miss Cole maintained that Harold Cole had intended to leave his estate equally to his two children, Paul and herself, and denied any discussion with Mrs. Bannister-Cole about altering its terms. She emphasized her role as executor, responsible for maintaining the property and paying bills, and rejected the suggestion that Mrs. Bannister-Cole had any subsisting rights in the home.

[19.] Miss Cole also disputed Mrs. Bannister-Cole's account of devotion to Harold Cole, pointing to an incident shortly before his death when Mrs. Bannister-Cole had allegedly planned social outings rather than remaining at his side. She denied that Mrs. Bannister-Cole had furnished or renovated the home, stating it had already been fully furnished when she moved in. Finally, she rejected outright the claim that Harold had

discussed purchasing Mrs. Bannister-Cole's life estate, putting her to strict proof of that assertion.

[20.] From the evidence of the Claimant and the Defendant, I found that the following facts are undisputed:

(i) Mrs. Bannister-Cole and Mr. Harold Cole were married on 31 December 2005 until his death on 28 April, 2019.
(ii) The Lancaster Road Property was the matrimonial home of Mrs. Bannister-Cole and Mr.Cole.
(iii) Mrs. Bannister-Cole continued to reside in the matrimonial home after the death of Mr.
Cole.
(iv) A Grant of Probate was obtained in the Estate of Harold Cole on 21 July 2020.
(v) Mrs. Bannister-Cole travelled on at least two occasions to Canada sometime in 2019 and again in 2020.
(vi) Mrs. Bannister-Cole on her last trip in 2020 did not return to The Bahamas until after November, 2022.

[21.] The issues in contention are a mix of fact and law:

(i) Whether Mrs. Joyce Bannister-Cole, as the surviving spouse of Mr. Harold Anthony Cole, possessed a statutory right of occupation in the Lancaster Road Property, pursuant to section 24 of the Inheritance Act 2002.
(ii) Whether the bequest of the Lancaster Road Property to the children constituted a specific devise, thereby excluding the operation of the surviving spouse's statutory right of occupation under section 24(3) of the *Inheritance Act 2002*.
(iii) Whether Mrs. Bannister-Cole vacated or abandoned the matrimonial home and returned to reside permanently in Canada sometime in or around 2020.
(iv) Whether the Claimant's application was barred by the limitation period prescribed under section 3(1)(a) of the Inheritance Act 2002, having regard to the date of the grant of probate and the statutory time limits for exercising rights under the First Schedule.

The Defendant's Submissions

[22.] The Defendant sought an order striking out the Claimant's Originating Application ("OA") with costs, on the grounds that it was frivolous, vexatious, and an abuse of process under the Inheritance Act, 2002 and the Civil Procedure Rules 2022 ("CPR").

[23.] The Defendant contended that the OA had been improperly commenced by originating application because section 24 of the IA permitted such procedure only where a person "*adversely affected*" by the surviving spouse's right of occupation applied for relief. The Claimant, being the surviving spouse and therefore the "*holder*" of that right, could not invoke section 24. Moreover, the matter involved substantial disputes of fact—including questions of ownership, purchases, and equitable interests—which rendered the OA unsuitable under CPR 8.15 which reads as follows:

> "The alternative procedure of an originating application form for commencing proceedings under this Part instead of by standard claim form or a fixed date claim form is intended for use where —
>
> (1) the Court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: or
>
> (2) a statute, rule or practice direction requires or permits the use of this procedure for commencing proceedings of a specified type.

[24.] The Defendant further submitted that section 3(1)(a) of the Act expressly provided that the right conferred by paragraph 1 of the First Schedule cannot be exercised after the expiration of six months from the date of receipt by the surviving spouse of the notification mentioned in subsection (2) of section 6 or after twelve months from the first taking out of representation in respect of the deceased's estate whichever is the latter.

[25.] She explained that section 2(1) of the Act defined "representation" as the probate of a will or the grant of administration, and that "taking out of representation" refers to obtaining such probate or grant. She identified the grant of probate as the relevant act of representation, noting that the certificate of probate for the estate of the deceased was issued on 21 July 2020.

[26.] The Defendant submitted that either event would trigger the limitation period, and if both occurred, the later event would determine the applicable deadline.

[27.] Finally, the Defendant contended that, even in the absence of formal notice under section 6(3), the grant of probate itself constituted constructive notice to the surviving spouse of the rights under the Act. Consequently, she maintained that the Claimant's application was time-barred, and that these timing issues formed part of a broader matrix of substantial factual disputes, rendering the use of an originating application an abuse of process.

[28.] In her supplemental submissions filed the Defendant maintained that there was a fundamental distinction between a general and a universal devise in the context of a will. She relied on section 20 of the Wills Act, which provides:

> "20. Every will **<u>shall be construed</u>** with reference to the real and personal estate referred to in it, **<u>to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will</u>**."
>
> [her emphasis added]

[29.] The Defendant submitted that, by virtue of this provision, the Court was bound to accept the terms of the will as drafted, giving effect to the testator's full intention unless a contrary intention appeared on its face. She emphasized that there was no dispute as to the validity of the will or the capacity of the testator, and that the Claimant had not filed a caveat but had instead commenced proceedings after probate had been granted.

[30.] The Defendant noted that she was mentioned in the will five times, her brother twice, and the grandchildren were also referenced, whereas the Claimant was not featured at all and had the testator intended to benefit the Claimant that he would have done so expressly. She relied on **Marley v Rawlins [2014] UKSC 2** as authority for the proper approach to the interpretation of wills, underscoring that the testator's intention must be derived from the language used.

[31.] The Defendant reiterated that her application to strike out the Originating Application was not confined to the limitation issue raised at paragraph 3(a)(i) of Inheritance Act, 202 as contained in the Notice of Application but extended to the entire claim.

[32.] She also addressed the complaint regarding the absence of an acknowledgment of service, explaining that an application for leave to file out of time was pending and that no prejudice would be occasioned to the Claimant if such leave were granted.

[33.] In conclusion, the Defendant invited the Court to strike out the Originating Application in its entirety, submitting that she would otherwise be constrained to incur unnecessary costs in defending meritless litigation.

The Claimant's Submissions

[34.] In her submissions in reply, Mrs. Bannister-Cole argued that the Defendant's application to strike out her claim was misconceived both procedurally and substantively. She emphasized that Miss Cole's reliance on section 3(1) of the First Schedule to the Inheritance Act was misplaced, as the limitation period could not begin to run without the statutory notice required under section 6. Mrs. Bannister-Cole pointed out that no such notice had ever been given to her, and therefore the limitation argument "must be rejected and or fall away."

[35.] She further submitted that Miss Cole's arguments about "mutually exclusive" limitation events ignored the statutory wording "whichever is the latter," which was fatal to her position. Mrs. Bannister-Cole also rejected the notion of "constructive notice," contending that if Parliament had intended probate to constitute notice, it would have said so.

[36.] On procedure, Mrs. Bannister-Cole argued that Miss Cole had failed to comply with the Civil Procedure Rules herself, including by not filing an acknowledgement of service, and therefore could not subject the claimant to what she described as a "*procedural purity test she herself cannot pass.*" She noted that the defendant's submissions strayed beyond the single ground identified in her Notice of Application and should not be entertained without leave to amend.

[37.] Mrs. Bannister-Cole asked the Court to interpret the will and declare whether the devise of the matrimonial home was a "specific devise" within the meaning of the Act. She also sought an accounting of the proceeds of sale of the former matrimonial home and appropriation of her life interest. She submitted that these issues were questions of law and matters of accounting, not susceptible to substantial dispute of fact, and therefore properly brought by originating application.

[38.] She reminded the Court of its overriding objective to deal with cases justly and at proportionate cost, and urged that striking out her claim would be unfair given the Defendant's own non-compliance and the substantive rights at stake.

[39.] Accordingly, Mrs. Bannister-Cole submitted that her originating application was properly before the Court, that the Defendant's limitation argument failed, and that the Court should proceed to determine the substantive issues of her life interest and entitlement under the Inheritance Act, 2002.

Analysis and Disposition

[40.] The Defendant in her submissions sought an order that the action be struck on the basis that it is frivolous, vexatious and an abuse of process of the Court given the provisions of the Inheritance Act.

[41.] It is undisputed that the Court has the discretion to strike out an action or a part thereof pursuant to Part 26.3 of the CPR.

[42.] This Court in **Pinnacle Construction v Lakeview Manor Condominium [2020] CLE/gen FP 00904** at paragraphs 20 and 21 said:

> "The jurisdiction to strike out is well established but must be exercised sparingly. As Lord Hope observed in ***Three Rivers District Council v Bank of England (No. 3)*** **[2001] UKHL 16**, striking

out is a "draconian step" and should only be taken where it is plain and obvious that the claim cannot succeed. Likewise, in ***Swain v Hillman* [2001] 1 All ER 91**, Lord Woolf MR emphasized that summary disposal is reserved for cases that are "hopeless or bound to fail."

This principle has been consistently applied in Bahamian cases, where the Supreme Court in ***Samuel Bevans v Attorney General* (2022/PUB/jrv/00009)**, reiterated that strike-out powers must be exercised cautiously and only where a claim is clearly unsustainable. Similarly, in ***Axcel Investments Ltd v Colina Mortgage Corp Ltd* SCCiv App. No. 152 of 2024**, the Court of Appeal emphasized that the discretion to strike out under Order 18 rule 19 of the Rules of the Supreme Court and rule 26 of the CPR is exceptional, and the Court must be satisfied that the pleading discloses no reasonable cause of action before depriving a party of its right to trial."

[43.] The Defendant cited the Honourable Justice Charles (as she then was) in **B.E. Holdings Limited v Piao Lianji [2014] CLE/gen/01472** where she said:

> "[8] In Walsh v Misseldine [2000] CPLR 201, CA, Brooke LJ held that, when deciding whether or not to strike out, the court should concentrate on the intrinsic justice of the case in the light of the overriding objective, take into account all the relevant circumstances and make a broad judgment after considering the available possibilities.
>
> The court must thus be persuaded either that a party is unable to prove the allegations made against the other party, or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial."

[44.] The Defendant concluded by referring to (i) that the Originating Application is predicated on a section of a statute which has no bearing on the nature of the application or the relief sought; (ii) the limitation contained in section 3(1)(a) and (c) of the Inheritance Act at best amounts to a full-on bar to the claim and renders the Originating Application an abuse of process and at the least would amount to a factual discrepancy which nonetheless renders the Originating Application inappropriate and an abuse of process and (iii) the court would be required to determine on a factual basis whether the devise is universal, or specific for the purposes of section 3(1)(c).

[45.] Mrs. Bannister-Cole asked the Court to determine inter alia, whether, on a proper construction of section 24 and the First Schedule of the Inheritance Act 2002 (Chapter 116), the clause in the Last Will and Testament of Harold Anthony Cole dated 25 October 2018 which gave "*all real and personal estate not otherwise disposed of to his children, Torah Anita Camille Cole and Paul Anthony Cole, in equal shares*" — constitutes a specific devise for the purposes of the Act. She sought also an accounting and appropriation order.

[46.] I reiterate my observation at paragraph 21 that the issues in contention are a mix of facts and law as follows:

(v) Whether Mrs. Joyce Bannister-Cole, as the surviving spouse of Mr. Harold Anthony Cole, possessed a statutory right of occupation in the Lancaster Road Property pursuant to section 24 of the Inheritance Act 2002.

(vi) Whether the bequest of the Lancaster Road Property to the children constituted a specific devise, thereby excluding the operation of the surviving spouse's statutory right of occupation under section 24(3) of the *Inheritance Act 2002*.

(vii) Whether Mrs. Bannister-Cole vacated the matrimonial home and returned to reside permanently in Canada sometime in or around 2020.

(viii) Whether the Claimant's application was barred by the limitation period prescribed under section 3(1)(a) of the Inheritance Act 2002, having regard to the date of the grant of probate and the statutory time limits for exercising rights under the First Schedule.

Preliminary Procedural Matters

[47.] At the outset, I will address two procedural issues raised by the parties as follows: (i) failure by the Defendant to file an acknowledgement of service and (ii) failure of the Claimant to file a caveat prior to commencing the claim.

Failure to file an Acknowledgement of Service

[48.] Rule 8.22 of the Supreme Court Civil Procedure Rules (CPR) provides that:

> *"A defendant who has not filed an acknowledgment of service may not take part in the proceedings, except with the permission of the court."*

[49.] The Defendant has not filed an Acknowledgment of Service as required by CPR 8.22. That rule is explicit: absent acknowledgment, a defendant may not take part in proceedings save with the court's permission. The Defendant's application to strike out is therefore procedurally irregular. The Claimant is entitled to contend that prejudice arises from the defendant's attempt to bypass the prescribed gateway into the proceedings and the court must guard against undermining the procedural discipline of the Rules.

[50.] The Defendant explained that there is an extant application for an extension of time to file an Acknowledgment of Service by the Defendant. The Court is unaware of this application. However, in order to regularize the Defendant's participation, the Court directs that the Defendant shall file an Acknowledgment of Service within five (5) days of the date of this

written ruling. The Court's discretion under CPR 8.22 and its inherent jurisdiction to extend time is exercised so as to permit the defendant's application to strike out to be considered. This ensures compliance with the Rules while safeguarding the overriding objective of dealing with cases justly and proportionately.

Failure to file a Caveat prior to commencing the Action

[51.] The Defendant complained of the Claimant's failure to file a caveat prior to commencing the action against her. However, she did not cite any authority for the necessity of filing a caveat as a precondition or requirement to commencement of an action.

[52.] I am unaware of any rule requiring the same to be done.

[53.] There is however, a narrower rule or requirement per section 30 of the Probate and Administration of Estates Rules, 2011 that a caveat is required before issuing a citation.

[54.] Therefore, I am satisfied that this omission does not render the proceedings incompetent. The purpose of filing of a caveat is a protective measure designed to prevent the grant of probate or administration pending the resolution of a dispute, but it is not a mandatory precondition to the initiation of proceedings challenging or seeking relief in relation to an estate save for the commencement of citation proceedings.

The Issues

[55.] The Defendant has asked the court to strike out the originating application on the basis (i) that the Claimant has made an application on the basis of a provision in the Inheritance Act, 2002 which does not apply to her; (ii) limitation period issues; (iii) determination of whether the devise in the will of Mr. Cole of the Lancaster Road Property to his children is specific for the purposes of section 3(1)(c) of the Inheritance Act, 2002 and (iv) that there are substantial disputes of facts which makes the originating application procedure an inappropriate process and an abuse of process.

Whether the devise of the Lancaster Road Property is a specific devise

[56.] The testator, Mr. Cole, in his will declared: *"I give, devise and bequeath all of my real estate and all of my personal estate whatsoever situate of whatever kind not hereby disposed of unto my said children, Torah Camille Cole and Paul Anthony Cole in fee simple as tenants in common and in equal shares absolutely."*

[57.] Section 3(1)(c) of the First Schedule to the Inheritance Act 2002 (Bahamas) is pivotal in the dispute because it expressly limits Mrs. Bannister-Cole's (as the surviving spouse) statutory right of occupation under section 24. It provides that the right of appropriation of

the matrimonial home "shall not be exercisable in relation to a dwelling-house which is the subject of a *specific devise* to a child of the deceased." [My emphasis added]

[58.] Even though Mrs. Bannister- Cole has claimed a right of occupation under section 24, the issue is whether the Lancaster Road Property was specifically devised to the children of the deceased. The effect of section 3(1)(c) would mean that her statutory right cannot override that devise.

[59.] There is a hierarchy of rights and a specific devise is given priority over the statutory occupation right in this narrow circumstance. Therefore, the case therefore turns on whether the property falls squarely within the scope of a "specific devise to a child." If it does, the spouse's occupation right is excluded by statute.

[60.] The Defendant contended in her submissions that the Lancaster Road Property was the subject of a specific devise to the children of the deceased, thereby excluding the operation of the surviving spouse's statutory right of occupation. However, this research was limited and did not sufficiently assist the court in reaching a conclusion on this critical issue.

[61.] Similarly, the Claimant did not address the Court on this issue.

[62.] In those circumstances, and mindful of the Court's duty to further the overriding objective by dealing with cases expeditiously and fairly, I have determined that it is appropriate to resolve the matter without directing further submissions. To remit counsel to address the Court on this point would cause unnecessary delay and increase costs. Accordingly, I have considered the issue.

[63.] The English authorities establish that a specific devise is, in general, a testamentary gift of identified real property, or of a defined part of identified real property, distinguished by the terms of the will from the residue of the estate and intended to pass to the devisee as the property itself. The emphasis lies upon the identification of the subject matter and upon the intention that the devisee should take the property in specie rather than merely share in its value. That general conception is supported by **Fielding v Preston (1857) 1 De G & J 438** and **Conron v Conron (1858) 11 ER 67**, both of which treat specificity as depending upon whether the gift is capable of being identified as a distinct subject of testamentary disposition.

[64.] The devise in the present case—"*I give, devise and bequeath all of my real estate and all of my personal estate whatsoever situate of whatever kind not hereby disposed of unto my said children, Torah Camille Cole and Paul Anthony Cole in fee simple as tenants in common and in equal shares absolutely*"—is expressed in general terms. Unlike the devise of a particular house or identified parcel of land treated as specific in **Re Wilson, deceased;**

Wilson v MacKay [1966] 3 WLR 365, this clause encompasses the entirety of the testator's remaining real and personal property. In my judgment it therefore operates as a residuary or general devise rather than a specific one.

[65.] At the same time however, the authorities recognise that the use of words such as "rest" or "remainder" do not necessarily deprive a devise of its specific character if the will is dealing with the balance of an already identified corpus of land. Thus, in **Springett v Jenings (1871) LR 6 Ch App 333** and **Re Davies; Thomas v Thomas-Davies [1928] Ch 24,** the remainder of land in a named locality was treated as specific because the subject matter remained tied to a defined body of property rather than to the residue of the estate generally.

[66.] By contrast, the present clause is not confined to a defined corpus of land but sweeps in *"all my real estate and all my personal estate whatsoever situate of whatever kind not hereby disposed of."* Therefore, the subject matter is not a distinct parcel but the whole residue of the estate, and accordingly the devise must be characterised as general or residuary rather than specific.

[67.] In **Henfield v. Walkine [2015] 1 BHS J. No. 16**, the Honourable Justice Ian R. Winder (as he then was) held that a devise of three acres of land was a specific devise, and because the property had already been conveyed during the testator's lifetime, the devise was adeemed and failed. This case illustrates the vulnerability of specific devises to ademption.

[68.] Accordingly, Mr. Cole's clause is properly characterized as a general devise, being directed to *all real* and personal *estate* not otherwise disposed of, and not to any particular parcel of land. As observed in paragraphs 58 and 59, the distinction is crucial because section 3(1)(c) of the Inheritance Act, 2002 expressly excludes the surviving spouse's statutory right of occupation where the dwelling-house has been made the subject of a specific devise to a child of the deceased. In my judgment, that exclusion does not arise in the present case, since the devise here is general in nature.

[69.] The issues remaining are each interconnected and will be discussed together.

Improper reliance on section 24 for commencement of the action

[70.] It is the Defendant's position that the action is improperly pleaded because the surviving spouse cannot invoke section 24 of the Inheritance Act, 2002 in the manner that the Claimant has done in her Originating Application.

[71.] Even if I accept this submission, it is obvious to the Court that the Claimant as the surviving spouse is attempting to enforce the rights provided for in Section 24 of the *Inheritance Act 2002* which established a statutory right of occupation for a surviving

spouse. The surviving spouse though not entitled to the matrimonial home by virtue of ownership or otherwise, is permitted to remain in occupation following the death of the spouse who was so entitled. The provision is designed to protect the surviving spouse from immediate eviction or exclusion by heirs or personal representatives, subject only to the occurrence of specific events such as death, remarriage, or modification by court order.

[72.] She maintained that this right existed independently of the testamentary dispositions of her late husband and could not be extinguished by his omission to make express provision for her in his will. Her evidence is that she continued to regard the Lancaster Road Property as her home, left personal belongings there, and never relinquished her right of occupation.

[73.] In reply, the Defendant submitted that the Inheritance Act 2002 does not confer an automatic or absolute right of occupation, and that any such right must be interpreted in harmony with the rights of beneficiaries under the will. The Defendant further argued that even if the Act applied, the Claimant's alleged relocation to Canada would disentitle her to any continuing statutory protection.

[74.] These competing submissions reveal that the dispute is not confined to a narrow question of testamentary construction. The Claimant's case raised a distinct statutory issue: whether the Inheritance Act 2002 confers upon her a right of occupation that survives the testamentary disposition and binds the executors and beneficiaries.

[75.] Pleadings exist to define the issues and give the opposing party fair notice of the case they must meet. Despite the drafting error relative to section 24 of the Inheritance Act, 2002, the Defendant is not truly embarrassed in the procedural sense and understands the substance of the case she has to meet.

[76.] The authorities show that a poorly pleaded claim will not usually be struck out merely because it is defective as long as it identifies a substantial case, the defendant knows the case she has to meet and any procedural unfairness can be cured by amendment, directions and costs.

[77.] The authorities **Ketteman v Hansel Properties Ltd [1987] 2 WLR 312, Republic of Peru v Peruvian Guano Co (1887) 36 Ch D 489** show, taken together, that the court aims to decide the real issues in dispute, will not punish mere mistakes in pleading if injustice can be avoided, and should reserve strike-out for cases that are plainly bad or incapable of cure.

Whether originating application is a proper form for the action

[78.] The factual dispute concerning whether the claimant vacated or abandoned the matrimonial home is directly relevant to the statutory question. The Claimant asserted that she left

personal items in the home and returned to The Bahamas after temporary absences; the Defendant on the other hand asserted that she permanently relocated to Canada. This is a factual issue that cannot be resolved without evidence and cross-examination and the Originating Application does not lend itself to addressing this.

[79.] CPR 8.19 reads as follows:

> (1) The Court may at any stage, either on application or on its own initiative, order a claim commenced by originating application form to continue as if the proceedings had been commenced using a standard claim form and where the Court takes this course it will give such directions as it considers appropriate.

Limitation Issues

[80.] There is the additional issue of whether the Claimant's application is barred by the limitation period prescribed under section 3(1)(a) of the *Inheritance Act 2002*, having regard to the date of the grant of probate and the statutory time limits for exercising rights under the First Schedule.

[81.] Section 6(3) of the *Inheritance Act 2002* requires that notice of the grant of probate be served upon any person entitled to make a claim under the Act. The question of whether such notice was served upon the Claimant, or whether she otherwise had actual or constructive knowledge of the grant, is a matter of fact. The Defendant's submissions rely on the date of the grant and the passage of time since its issuance; however, the Court is not satisfied that the evidence presently before it established that the Claimant was duly served or had notice sufficient to trigger the running of the limitation period. However, again these issues are required to be pleaded which given that the action has been commenced by Originating Application makes it impossible to do.

[82.] The limitation defence therefore raises factual questions concerning service, notice, and knowledge—issues that cannot be resolved summarily and in originating application format. The Court must determine, upon evidence, whether the statutory period began to run and whether any equitable considerations arise that may extend or suspend the limitation period. These matters are properly triable and unsuitable for determination on affidavit evidence alone.

Conclusion

[83.] Having considered the issues raised—namely, the existence and scope of the Claimant's statutory right of occupation under section 24 of the Inheritance Act 2002, the factual question of whether the Claimant abandoned the matrimonial home, and the limitation period including the question of statutory notice—the Court is satisfied that each issue

involves mixed questions of law and fact which disclose triable issues requiring proper ventilation at trial. These matters are not suitable for summary determination under Part 26.3 of the CPR and must be resolved in the ordinary course of trial.

[84.] In light of these findings, the Defendant's application to strike out the Claimant's originating application is refused. The claim cannot be said to be so plainly and obviously unsustainable as to justify the exceptional remedy of strike-out.

Conversion of Proceedings

[85.] Given the potential for substantial disputes of fact, the Court directs that the proceedings shall continue as if commenced by claim form, so that the issues may be properly ventilated and adjudicated on their merits. The Court is guided in this approach by CPR 8.15(1) and CPR 8.19(1), which together provide that *where a claim is commenced by fixed date claim form or originating application and the Court considers that the matter raises a substantial dispute of fact, the Court may order the claim to continue as if begun by claim form and may give directions accordingly.*

Costs

[86.] Although the Defendant has been unsuccessful in its strike-out application, the Court is not convinced that costs should automatically follow the event, viz., the Claimant is entitled to costs per CPR 71.6.

[87.] However, the Claimant, while successful in resisting the strike out application, must nonetheless file a statement of claim because the factual disputes disclosed cannot properly be resolved on the basis of the existing originating application. In these circumstances, the Court exercises its discretion to depart from the general rule that costs follow the event. In accordance with the Court's power pursuant to 71.6(2) and no order is made as to costs.

[88.] Accordingly, in the circumstances I make the following orders:

(1) The Defendant's application to strike out the Claimant's Originating Application is refused.

(2) The Defendant shall file an Acknowledgement of Service within five (5) clear days from the delivery of this written ruling.

(3) The proceedings are hereby converted to continue as if commenced by claim form, pursuant to CPR 8.19(1).

(4) The Originating Application filed herein shall stand as the Claim Form in these proceedings.

(5) The Claimant shall, within fourteen (14) days of the date of this Order, file and serve a Statement of Claim.

(6) The Defendant shall have twenty-eight (28) days from service of the Statement of Claim to file and serve a Defence.

(7) The trial date scheduled for 19 June, 2026 at 10:00 am will be treated as a Case Management Conference.

(8) There shall be no order as to costs.

Dated this 22nd day of April, 2026

Camille Darville Gomez
Justice