

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Probate Division

2021/PRO/cpr/0059

In the Estate of **MILLICENT GERTRUDE SMITH**, late of No.12 Premier's Avenue, Baillou Hill Heights Subdivision in the Southern District of the Island of New Providence, one of the islands of the Commonwealth of the Bahamas

AND in the Matter of a Last Will and Testament of **MILLICENT GERTRUDE SMITH**
Deceased dated the 7th day of March, A.D. 2019

AND in the Matter of a Last Will and Testament of **MILLICENT GERTRUDE SMITH**
Deceased dated the 28th day of March, A.D. 2019

B E T W E E N

CHARMEAL DENISE JOHNSON-MACKAY

Claimant

AND

ALLISON GIBSON

1ST Defendant

AND

CORIE SMITH

2nd Defendant

Before: **The Honourable Madam Justice C.V. Hope Strachan,
Justice of The Supreme Court of the Commonwealth of the Bahamas**

Appearances: **Ms. Margaret Gonsalves - Sabola for the Claimant
Mrs. Sidney Cambridge for the Defendants**

Hearing dates: **October 27, 2025; January 28, 2026**

Strike out application, want of prosecution, inexcusable delay, abuse of the process of the court.

INTRODUCTION

[1.] This decision is made with respect to an Application arising from the Defendants' request that the Court dismiss the Claimant's Writ of Summons for want of prosecution, based on alleged inordinate and inexcusable delay in the prosecution of the claim. The Defendants contend that the delay amounts to an abuse of the Court's process and that the claim ought to be struck out pursuant to Part 26.3 of the Supreme Court Civil Procedure Rules, 2022, as well as under the Court's inherent jurisdiction. The Claimant opposes the Application and submits that the delay is explained, that no prejudice sufficient to justify the drastic remedy of strike-out has been demonstrated, and that the issues raised concerning the validity of the Will ought properly to be determined at trial.

Background

[2.] On 15th October 2021, a Writ of Summons was served on the Defendants by the Claimant, alleging that the purported Last Will and Testament of Millicent Gertrude Smith was not validly executed. A response to the Claimant's claim was filed by the Defendants on 25th November, 2021. Following the filing of that response, Reply was filed and served by the Claimant on 24th December, 2021. No further procedural steps were taken by the Claimant to advance the action. By Notice of Application filed on 14th August, 2025, the Defendants, Allison Gibson and Corrie Smith, applied for an order striking out the Claimant's claim for want of prosecution and delay, pursuant to Part 26.3 of the Supreme Court Civil Procedure (Amendment) Rules, 2022, and under the Court's inherent jurisdiction.

Defendants' Evidence

- [3.] The application is supported by the Affidavit of the 1st Defendant filed on 14th August, 2025.
- i. The 1st Defendant admits that she and the 2nd Defendant are the Executors of the Last Will and Testament of Gertrude Smith, deceased, dated 28th March 2019.
 - ii. In their capacity as Executors, the Defendants applied to the Supreme Court of the Commonwealth of the Bahamas for a Grant of Probate.
 - iii. However, on 6th April 2021, the Claimant lodged a Caveat in the Probate Registry of the Supreme Court, which had the effect of staying the probate proceedings.
 - iv. The Claimant claimed to be in possession of a separate last Will of the deceased, and proclaimed that the Will being probated was fraudulent.

- v. The 1st Defendant further states that a response on behalf of the Defendants was entered on 29th October 2021 and a Defense filed on 25th November 2021.
- vi. The Defendants assert that since the filing of their defense, the Claimant has taken no steps to advance the action.
- vii. In paragraph 6 of her Affidavit, the 1st Defendant states that:

“The delay in these proceedings has caused substantial prejudice to the heirs at law of the Estate in that there are numerous buildings in the Estate bequeathed to the Defendants which are controlled by the Plaintiff and are not accessible to the Defendants. The Claimant’s delay simultaneously impacts the maintenance of these buildings.”
- viii. The 1st Defendant further attests that she and the 2nd Defendant are at the ripe age of 60 and 56 years of age, respectively, and wish to enjoy their inheritance while they are yet alive.
- ix. The Defendants also acknowledge that there has been a pending police investigation. The investigation was initiated by the Claimant in connection with the fraud allegation. The Defendants state that they have fully cooperated with that investigation.
- x. In their Notice of Application, the Defendants assert that the present proceedings:
 - 1) constitute an abuse of the Court’s process.
 - 2) are frivolous and vexatious.
 - 3) seek to overturn a properly executed Last Will and Testament, together with duly registered deeds and documents; and
 - 4) are prejudicial to the Defendants because the delay prevents them from enjoying their inheritance.
- xi. The Defendants therefore contend that there is no reasonable explanation for the inordinate and inexcusable delay in prosecuting the action.

[4.] Claimant’s Submission in Opposition to The Defendants’ Application to Strike Out

- i. The Claimant opposes the strike-out application
- ii. The Claimant relies upon CPR Rule 26.3(1)(c).
- iii. The Claimant’s case is founded on the fact that delay alone does not constitute an abuse of process. In support of this argument, the Claimant relies **on Alba Exotic**

Fruit SH PK v MSC Mediterranean Shipping Co SA [2019] EWHC 1779 (Comm).

- iv. The Claimant further submits that striking out the claim would be disproportionate and inconsistent with the Overriding Objective of the Supreme Court Civil Procedure Rules, 2022.
- v. The Claimant also invited the Court to consider the issue of proportionality with reference to **Walsham Chalet Park Ltd v Tallington Lakes Ltd [2014] EWCA Civ 1607**, and **A.D. v A.D. Supreme Court, Common Law and Equity Division, 2023/CLE/gen/00856 at [36]**.
- vi. The Claimant maintains that the claim raises serious issues concerning the validity of the Will and that the matter ought properly to proceed to trial.

Issues

[5.] The issues before the Court for consideration in this matter are as follows:

- 1) Whether the delay in prosecuting the claim amounts to an abuse of the Court's process or otherwise justifies striking out the claim pursuant to CPR Part 26.3(1)(a).
- 2) Whether the Statement of Case discloses no reasonable grounds for bringing the claim pursuant to CPR Part 26.3(1)(b).
- 3) Whether the Statement of Case is frivolous, vexatious, prolix, or otherwise non-compliant so as to justify strike out pursuant to CPR Part 26.3(1)(c).
- 4) If a strikeout is not justified, whether a proportionate case management remedy should be imposed.

LAW

[6.] It is important to establish that the Court derives its power to Strike Out an Action from Part 26.3(1) of the Supreme Court Civil Procedure Rules, 2022:

"The court may strike out a statement of case or part of a statement of case if it appears to the court that—

(a) there has been a failure to comply with a rule, practice direction, order, or direction given by the court in the proceedings;

(b) The statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim; or

(c) The statement of case or the part to be struck out is frivolous or vexatious, is an abuse of the process of the court, or is likely to obstruct the just disposal of the proceedings, or is prolix or does not comply with the requirements of Part 8 or Part 10."

[7.] The Court retains inherent jurisdiction to dismiss proceedings for want of prosecution or abuse of process. The governing principles in Strike Out actions for “want of prosecution” were articulated in *Birkett v James* [1978] AC 297, where *Lord Diplock* stated that dismissal for want of prosecution will generally arise where:

- 1) There has been an inordinate and inexcusable delay, and
- 2) The delay creates a substantial risk that a fair trial is not possible or causes serious prejudice to the defendant.

[8.] The Court's evaluation of delay as a basis for striking out must be substantiated alongside other factors as articulated in Major *Consulting Limited v CIBC Trust Company (Bahamas) Limited* [2014] 2 BHS J. No. 19, where *Winder J* held at paragraph 16:

“On the question of inordinate and inexcusable delay, the state of the law also requires the defendant to demonstrate that the delay will give rise to a substantial risk that it is not possible to have a fair trial or that such delay is likely to cause, or to have caused, serious prejudice to the defendant.”

[9.] In a similar vein, *Fraser JA* in *Vidal v Mayor of Port of Spain* (1968) 13 WIR 299 emphasized the Court's focus in its determination of these matters:

“Dismissal is no doubt a stern measure, but it is the duty of a plaintiff and his advisers to get on with the action. Cases should proceed expeditiously and, if necessary, the courts should enforce expedition and, in a proper case, strike out an action for want of prosecution.”

Guidance on Procedural Breaches

[10.] Guidance as to the Court's approach to procedural breaches was provided in *Denton v TH White Ltd* [2014] EWCA Civ 906; [2014] 1 WLR 3926, where the Court held that the following ought to be factored:

- 1) the seriousness and significance of the breach;
- 2) the reasons for the breach; and
- 3) all the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate cost.

[11.] Strike out is often referred to as a draconian remedy. It is not a sanction to be imposed lightly or arbitrarily, and the Court must be satisfied that the circumstances of the case justify such an extreme measure as the most appropriate course in the litigation process. The history of the Court has been to approach strike-out with caution and with due regard to

proportionality. In *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607, the Court of Appeal underscored the need for the Court to consider whether the sanction sought is proportionate to the procedural default in question. Similarly, in *HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd* [2014] UKSC 64, Lord Neuberger observed at paragraph 16 that:

“The striking out of a statement of case is one of the most powerful weapons in the court’s case management armory and should not be deployed unless its consequences can be justified.”

[12.] Accordingly, the Court must be satisfied that no lesser case management measure would adequately address the circumstances before resorting to the drastic step of striking out a party’s claim.

DISCUSSION

Inexcusable/ Inordinate Delay/ Abuse

[13.] The Defendant’s case is founded on the basis of delay. Approximately four years elapsed between the filing of the Claimant’s Reply in December 2021 and the filing of the present application in August 2025.

[14.] Whereas the Court accepts that this passage of time constitutes a significant delay in the proceedings, the mere existence of delay does not automatically justify the strike out of a claim, nor does it signify abuse.

[15.] Well established in *Birkett v James* [1978] AC 297, the Court considered not only whether the delay is inordinate and inexcusable, but also whether the delay gives rise to a substantial risk that a fair trial will not be possible or that serious prejudice will be caused to the defendant. The presence of delay alone is therefore insufficient as a determining factor to strike out.

[16.] The Court must examine the circumstances attributed to the delay and its impact on the Defendant.

[17.] The reasons for the delay were provided. Since there were allegations of fraud, these allegations required an investigation and a forensic expert, which took some time. It was also explained that the impact and sensitivity of the 1st Defendant’s diagnosis of a grave illness. The Claimant provided evidence of financial exchanges in support of the 1st Defendant’s medical assistance, given the fact that financial support was solicited on his behalf. Finally, the Claimant provided evidence of possible exchanges to support that there was reliance on a promise that the Defendant would not pursue the Probate.

[18.] As part of its opposition to the Strike Out, The Claimant relied on *Alba Exotic Fruit SH PK v MSC Mediterranean Shipping Co SA* [2019] EWHC 1779 (Comm) and *Walsham*

Chalet Park Ltd. v Tallington Lakes Ltd. [2014] EWCA Civ 1607. In the **Walsham** case, the Court affirmed its view that delay does not automatically constitute an abuse of process. Since both parties in *Alba* had somewhat contributed to the delay, the Court, in its assessment, was more concerned about whether the delay rendered a fair trial impossible or caused irremediable prejudice. The Court reviewed the cause of the delay, noting that both parties might have contributed to it in some way.

[19.] The present case has factors that reveal that both parties, by reason of their actions, might have contributed to the delay. The Claimant outlined the following rationale for the Court's consideration:

- 1) There has been an ongoing police investigation concerning allegations of fraud relating to the Will.
- 2) delays associated with obtaining forensic expert evidence relevant to the authenticity and execution of the Will; and
- 3) circumstances surrounding communications between the parties, including matters affecting the Defendants.
- 4) The claimant noted that she was subject to financial issues as a result of assisting the 2nd Defendant with his health crisis
- 5) The claimant relied on promises to not pursue the Probate, but allow the Claimant to pursue the Probate using the Will, which she claims to be the legitimate will of the Testatrix.

[20.] The explanations provided above are matters the Court must factor in considering whether the delay amounts to a procedural default sufficient to warrant the striking out of the claim. While the rationale advanced by the Claimant does not entirely justify the period of inactivity, they nevertheless provide context for the delay and prevents the Court from concluding that the delay was wholly inexcusable or contumelious. In this regard, the Court is guided by the reasoning in *Major Consulting Limited v CIBC Trust Company (Bahamas) Limited [2014] 2 BHS J. No. 19*, where *Winder J* emphasized that the Court must carefully assess both the reasons for the delay and the resulting prejudice, before determining whether the drastic sanction of dismissal for want of prosecution is warranted.

Abuse of the Process

[21.] Abuse of process concerns the misuse of the Court's procedures. The Defendants contend that the Claimant's action constitutes an abuse of the Court's process due to the delay in prosecuting the claim.

[22.] In law, the abuse of process arises where the Court's procedures are used in a manner that is unfair to a party or that brings the administration of justice into disrepute. The principle was articulated in *Hunter v Chief Constable of the West Midlands Police [1982] AC 529*, where Lord Diplock stated that the Court has the inherent jurisdiction to prevent misuse of its procedure in a way that would be manifestly unfair to a party to litigation or otherwise bring the administration of justice into disrepute.

- [23.] Delay alone does not automatically constitute abuse of process. Courts have consistently recognized that while delay may be undesirable, it does not, by itself, amount to abuse unless it undermines the integrity of the judicial process. In *Alba Exotic Fruit SH PK v MSC Mediterranean Shipping Co SA* [2019] EWHC 1779 (Comm), the Claimant had failed to apply for a case management conference over a period of four years and seven months. Alba provided reasons for the delay, which were deemed “not only to be not good reasons.” The explanations were also found to be vague, unsatisfactory, and inconsistent. In its findings, the Court asserted that during the period of delay, MSC had also not applied for a Case Management conference.
- [24.] The Court also emphasized the overriding objective of the CPR rules “to deal with cases justly and at proportionate cost.” In this regard, the Court affirmed that delay alone does not necessarily amount to an abuse of process, nor does it inevitably render a fair trial impossible. The court's decision in Alba was based on an alternative relief, enabling the pursuit of justice rather than an order to Strike Out the action entirely.
- [25.] In the same way, this Court must determine if the conduct in question constitutes an abuse of the Court’s procedures, instead of just being a case of procedural inactivity. Alternatively, the Defendants have also failed to provide any evidence to support their desire to expedite the case by filing an application in favour of a Case Management date.
- [26.] The Court must consider the impact of these actions on both parties. The purpose of the doctrine of abuse of process is to protect the integrity of the judicial process while ensuring fairness to the parties. On the one hand, prolonged delay may prejudice defendants who remain subject to unresolved litigation. On the other hand, striking out a claim on the basis of abuse may permanently deprive a claimant of the opportunity to have substantive issues determined on their merits. The Court must therefore balance the interests of procedural discipline with the fundamental principle that disputes should, where possible, be resolved through a full examination of the evidence.
- [27.] The present proceedings do not meet the threshold for abuse of process. In the circumstances of this case, the Court is not satisfied that the Claimant’s conduct amounts to a misuse of the Court’s procedures. While there has been a delay, the evidence does not demonstrate that the claim was brought for an improper purpose, nor that the continuation of the proceedings would bring the administration of justice into disrepute. The proceedings challenge the validity of a Will and therefore involve issues properly within the Court's jurisdiction.
- [28.] The interests of justice favour determination on the merits. The Court therefore concludes that the delay identified by the Defendants, while significant, does not amount to an abuse of process within the meaning of **CPR Part 26.3(1)(c)**. In the absence of evidence demonstrating misuse of the Court’s procedures or serious prejudice affecting the fairness of the trial, the continuation of the proceedings does not undermine the administration of justice.

Frivolous or Vexatious Claim

- [29.] A claim must be clearly unsustainable before it can be labeled as frivolous or vexatious. The defendants have argued that the proceedings are frivolous and vexatious because they aim to challenge what they claim is a properly executed will. However, simply disputing the validity of a testamentary document does not make the claim frivolous. In **Attorney General of Trinidad and Tobago v Ramanoop [2005] UKPC 15**, the Privy Council noted that proceedings can be properly considered frivolous or vexatious if they are obviously unsustainable, lack any reasonable basis, or are mainly initiated to harass or oppress the opposing party. The court must therefore assess whether the claim presents an arguable issue suitable for judicial resolution.
- [30.] The present claim raises triable issues concerning the validity of the Will. The Claimant has challenged the execution of the Will and has referred to forensic inquiries and an ongoing investigation. These allegations, whether ultimately proven or not, raise matters which are capable of judicial determination. The Court therefore cannot conclude that the claim is plainly unsustainable or devoid of merit.
- [31.] The threshold for frivolous or vexatious proceedings is therefore not met. In the circumstances, the Court finds that the Claimant's challenge to the validity of the Will raises issues that should properly be determined at trial. The claim cannot properly be characterized as frivolous or vexatious within the meaning of **CPR Part 26.3(1)(c)**. In **AG and Tobago v Ramanoop, [2005] UKPC 15**, the *Privy Council* observed that proceedings may properly be characterized as frivolous or vexatious where they are obviously unsustainable, brought without any reasonable foundation, or instituted primarily to harass or oppress the opposing party. The Court must therefore consider whether the claim discloses an arguable issue fit for judicial determination.

Prejudice

- [32.] Prejudice must be real, not merely asserted. The Defendants contend that they have suffered prejudice arising from their inability to enjoy the benefits of their inheritance and from the alleged deterioration of the estate's property. While the Court acknowledges that such circumstances may be frustrating to the parties, the relevant prejudice in applications of this nature is not measured by inconvenience or delay in the enjoyment of property, but rather by whether the delay compromises the fairness of the trial itself.
- [33.] Delay must threaten the fairness of the trial before it justifies dismissal. The Court first observes that, based on the **Bahamas Statute of Limitations**, the limitation period for bringing the claim has not expired, and the principal records relating to the probate proceedings have already been filed and remain available. Nonetheless, the Court remains mindful of the risks that prolonged delay may present.
- [34.] In ***Birkett v James* [1977] 2 All ER 801**, the Court recognized the difficulties that may arise when proceedings are allowed to stagnate, noting that:

“When cases (as they often do) depend predominantly on the recollection of witnesses, delay can often be most prejudicial to defendants and to plaintiffs also. Witnesses’ recollections grow dim with the passage of time, and the evidence of honest men differs sharply on the relevant facts. In some cases, it is sometimes impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred.”

[35.] Birkett underscores the Court’s obligation to consider whether delay has impaired the ability of the parties to present their evidence fairly. The evidence must demonstrate actual forensic prejudice. In the present case, the Defendants have not adduced evidence demonstrating that the delay has compromised the integrity of the trial process. There is no evidence before the Court that provides that:

- 1) any material witness has become unavailable.
- 2) any relevant documentary evidence has been lost or destroyed; or
- 3) the Defendants’ ability to defend the claim has otherwise been materially impaired.

[36.] Absent such evidence, the threshold for strikeout is not met. The Court therefore finds that serious forensic prejudice has not been established. In the absence of such prejudice, the Court is not satisfied that the proceedings constitute an abuse of process, nor that the claim may properly be characterized as frivolous or vexatious. The proceedings challenge the validity of a Will and involve issues capable of judicial determination and should, in the interests of justice, be resolved on their merits.

CONCLUSION

[37.] As part of the Court’s guidance on the Striking Out of an Action, the Claimant drew reference to *A.D. v A.D. Supreme Court, Common Law and Equity Division, 2023/CLE/gen/00856 at [36]*, where the Court emphasized that the remedy of striking out proceedings must be exercised cautiously.

[38.] Having considered the applicable law and the evidence before it, the Court is not satisfied that the threshold required for the drastic remedy of striking out the claim has been met. Although there has been a delay in the prosecution of the claim, the Court finds that:

- 1) The delay is not wholly inexcusable,
- 2) the Defendants have not demonstrated serious prejudice affecting the fairness of a trial, and
- 3) The Claimant has raised substantive issues concerning the validity of the Will, which ought properly to be determined on their merits.

[39.] In the circumstances, the Court concludes that the drastic remedy of striking out the claim would be disproportionate to the delay alleged and would unjustifiably prevent the substantive issues in dispute from being determined on its own merits.

Decision

[40.] Accordingly, the Court orders as follows:

- 1) The Defendants' application to strike out the Claimant's claim pursuant to **CPR Part 26.3** is refused.
- 2) The matter shall proceed to a Case Management Conference on 30th April, 2026, at 9:30 a.m. via Zoom.
- 3) The Claimant shall comply with all case management directions issued by the Court. The Court may issue an Unless Order, failure of which may result in the claim being struck out without further application.
- 4) Costs of the application are to be borne by the Defendant. The payment of the costs herein is suspended pending the final outcome of the proceedings.

Dated this 13th day of April, A.D. 2026



The Hon. Madame Justice Hope Strachan

