



Neutral Citation Number: [2023] EWHC 3004 (Ch)

Case No: PT-2021-001068

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Royal Courts of Justice  
Rolls Building, Fetter Lane,  
London, EC4A 1NL

Date: 24 November 2023

Before :

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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Between :

**MASADUR RAHMAN**  
**- and -**  
**(1) DEWAN RAISAL HASSAN**  
**(2) LANA BASNEED ZAMAN**  
**(3) AMANI ZAMAN**  
**(4) FARIHAH ZAMAN**

**Claimant**

**Defendants**

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Application dealt with on paper

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this revised version as handed down may be treated as authentic.

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## **HHJ Paul Matthews :**

### **Introduction**

1. On 22 November 2023, I refused an application by the claimant for an adjournment of the trial in this claim, which is listed to begin on 27 November 2023, and to last seven days. I am the assigned trial judge. I said I would give reasons for my refusal in writing. These are those reasons. The application for an adjournment was first made by the claimant by way of a request for an adjournment form, AC 001, dated 16 November 2023. The defendants responded the same day opposing the request. The claimant then made a formal application by notice in Form N244. This was dated 17 November 2023, and was supported by a witness statement of the same date. However, the application was submitted to the court only on 20 November, on which day it was sealed.
2. I first saw the application later on the same day, 20 November 2023. I asked for comments to be sought from the defendants. I received an interim comment on 21 November 2022, saying that the application was opposed and that a witness statement was in course of preparation. On 22 November 2023, I received the witness statement on behalf of the defendants. I considered this, together with the other documents, as a matter of urgency, and reached the conclusion that I should refuse the application. This was communicated to the parties the same day.
3. The claim is for a declaration of the validity of certain gifts, said to have been made to the claimant by a gentleman called Al-Hasib Mian Muhammad Abdullah Al-Mahmood (“the deceased”), as *donationes mortis causa*. The claim is opposed. The first and second defendants are the executors of the deceased’s will, and the third and fourth defendants are beneficiaries under that will. The claimant has previously been represented in this matter by Moore Barlow and Crown Law solicitors, and until recently was represented by Gately Legal and counsel. On 24 October 2023, Gately ceased to act for the claimant, and he is now acting in person. The claimant’s evidence in support of his application does not explain how it was that his solicitors cease to act for him, and in particular whether he bears any responsibility for that.

### **Grounds for adjournment**

4. The application for an adjournment is made on three grounds. The first is that the defendant’s solicitors have not complied with court guidance and the order made by Master Kaye on 15 August 2022, paragraph 19, so that time is now too short for the claimant to obtain representation at the trial. The second is that the claimant’s wife is in poor health, and has an important hospital outpatient appointment on 30 November 2023, during the trial. Finally, the claimant says that his “close relatives died in Bangladesh”. I will deal with each of these grounds in turn.

### **The relevant law**

5. First, however, I set out the relevant law on applications for an adjournment of the trial. CPR rule 3.1(2)(b) provides:

“Except where these Rules provide otherwise, the court may—

[ ... ]

(b) adjourn or bring forward a hearing ... ”

6. In *Boyd & Hutchinson (A Firm) v Foenander* [2003] EWCA Civ 1516, Chadwick LJ (with whom Auld LJ agreed) said:

“9. ... in deciding whether or not to grant an adjournment, the court must have regard to the overriding objective of the Civil Procedure Rules set out in CPR 1.1, and in particular at subrule (2) of that rule. Having regard to the overriding objective requires the court to deal with a case, so far as is practicable, in a manner which saves expense, is proportionate to the amount of money involved and allocates to it an appropriate share – but no more than an appropriate share – of the court's limited resources. Courts are directed (by CPR 1.4) to have the overriding objective in mind when managing cases.”

7. In *Fitzroy Robinson Ltd v Mentmore Towers Ltd (No 2)* (2009) 128 Con LR 91, the application to adjourn the trial was made some 17 days before it was due to begin. Coulson J (as he then was), referred to the words quoted above, and said:

“9. More particularly, as it seems to me, a court when considering a contested application at the 11th hour to adjourn the trial, should have specific regard to:

- a) The parties' conduct and the reason for the delays [in complying with court orders and preparing for trial];
- b) The extent to which the consequences of the delays can be overcome before the trial;
- c) The extent to which a fair trial may have been jeopardised by the delays;
- d) Specific matters affecting the trial, such as illness of a critical witness and the like;
- e) The consequences of an adjournment for the claimant, the defendant, and the court.

I deal with each of these considerations in turn below.”

8. This was followed by the same judge in *Elliott Group Ltd v GECC UK* [2010] EWHC 409 (TCC), and quoted with apparent approval by Leech J in his very recent decision in *Wright v Chappell* [2023] EWHC 2873 (Ch).

9. Where the ground on which an adjournment is sought relates to medical issues, the court should bear in mind the guidance of the Court of Appeal in *Bilta (UK) Ltd v Tradition Financial Services Ltd* [2021] EWCA Civ 221. There, Nugee LJ (with whom Peter Jackson and David Richards LJJ agreed), said:

“30. ... the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for.”

10. I also bear in mind what Norris J said in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch), about the need for appropriate medical evidence, approved by the Court of Appeal in *Forrester Ketley v Brent* [2012] EWCA Civ 324, [26], and *Mohun-Smith v TBO Investments Ltd* [2016] 1 WLR 2919, [25]:

“36. ... Such evidence should identify the medical attendant and give details of his familiarity with the party’s medical condition (detailing all recent consultations), should identify with particularity what the patient’s medical condition is and the features of that condition which (in the medical attendant’s opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party’s difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case).”

### **The first ground**

11. The first ground of the claimant’s application arises out of paragraph 19 of the order made by Master Kaye on 15 August 2022. Paragraphs 17-19 provided:

“17. No later than 6 weeks before the date fixed for trial the claimant shall send the Defendants a draft bundle index for the trial bundle for the use of the Judge, in accordance with Appendix X to the Chancery Guide.

18. The Defendants shall send any comments on the draft index no later than 4 weeks before the trial date.

19. Preparation of the trial bundle must be completed and an electronic copy of the bundle must be served on the Defendants no later than 10 days before the date for exchange of Skeleton Arguments. The trial bundle shall include:
- (a) a case summary;
  - (b) a chronology;
  - (c) a trial timetable;
  - (d) a statement of issues to be determined by the Judge; and
  - (e) a statement of what the Judge should read in advance of the trial.”
12. It will be seen that, in the usual way, the burden of preparing the trial bundle index and the trial bundle was placed on the claimant. At that time the claimant was represented. By the time of the pre-trial review before me on 27 October 2023, the claimant was no longer represented. By paragraph 4 of my order made on that occasion, it was ordered that
- “The Defendants' solicitors have carriage of the preparation of the trial bundle in accordance with the trial bundle index when agreed between the parties.”
13. The claimant has assumed that the PTR order simply substitutes the defendants for the claimant in paragraph 19 of the order of 15 August 2022, so that the claimant’s obligations become those of the defendants. But it does not do that. It distinguishes between (i) the trial bundle index and (ii) the preparation of the trial bundle in accordance with that index *once agreed*. I accept that the defendants are given the obligation under (ii). But the order under (ii) does not require the defendants to prepare the trial bundle index. That obligation remains with the claimant. And, in fact, Gately Legal provided the draft trial bundle index to the defendants’ solicitors on 17 October 2023. That was one day short of six weeks before the expected trial date of 27 November 2023, so in substantive compliance with the order of Master Kaye.
14. On 25 October 2023, that is, one day after the notice of change of solicitor was filed and served, the claimant asked the defendants’ solicitors to prepare the PTR bundle, the trial bundle index and the trial bundle. On the same day the defendants’ solicitors confirmed that they would prepare the PTR bundle (which they did) and would review the draft trial bundle index provided by the claimant’s former solicitors. Having to prepare the PTR bundle delayed the defendants’ solicitors in their review of the draft trial bundle index. Under paragraph 18 of the order of Master Kaye, their comments on the index should have been provided by 30 October (though Gately Legal were in fact a day late in providing the index). In fact, they provided their comments in an updated index to the claimant only on 10 November, asking for a response by 13 November. The claimant responded asking for more documents to be added (which was done). An electronic bundle was provided to the claimant on 17 November 2023, and a hard copy on 20 November 2023. Under paragraph 19

of the order of Master Kaye, the claimant was to have delivered the bundle to the defendants by 12 November 2023. So there was a delay of 5 days (6 business days for the hard copy).

15. The claimant contends that the defendants are in breach of paragraph 19 of the order of 15 August 2022. I do not agree. The obligation under that paragraph was on the claimant. The obligation on the defendants under the PTR order in relation to the preparation of the bundle took effect only once the draft index was agreed, which was not earlier than 13 November. The defendants were in breach of paragraph 18, but this was at least contributed to by taking on the preparation of the PTR bundle at short notice. And they produced the bundle very swiftly after agreement on the index. In any event, the claimant will be familiar with the documents he disclosed, if not also those of the defendants, and has already had the pre-trial review bundle. The contents of the trial bundle supplied to him will therefore not come as a great surprise. In the circumstances, I do not consider that the claimant has suffered any significant prejudice, and that it would be possible to prepare properly for the trial. The more significant problem for him is ceasing to be represented.
16. The claimant says that, because of the late production of the trial bundle, the claimant did not have sufficient time to prepare the skeleton argument and the authorities by 22 November 2023. The claimant says he will be unrepresented at the trial because no counsel is available. He says both (i) that no counsel are available “on these dates”, and (ii) that no counsel would take the case because of the lack of documents. The first problem is that the claimant has not explained why his solicitors have ceased to act for him. If he wanted to rely on this fact, he would need to show that it was not because of anything for which he was responsible. But he has not explained this at all.
17. In any event the solicitors ceased to act on 24 October, over a month before the trial. I cannot believe that direct access counsel could not have been instructed at that stage, had the claimant wished to do so. Nor do I accept the explanation that counsel would have refused to act because of a lack of documents. The claimant had plenty of documents. In addition to his own documents, he would have had those disclosed by the defendants, and also those for the PTR, with which to instruct counsel. Counsel frequently prepare trials at short notice, if only because there are often problems with bundle preparation. It is something that counsel are both experienced and good at. Moreover, the defendants and their witnesses can give little or no evidence of the crucial matters of fact on which this trial is likely to turn. So the lack of an experienced cross-examiner is unlikely to make any difference.
18. I quite accept that a litigant in person will have greater difficulty than an experienced litigation lawyer in conducting a lengthy trial. But that would have been true even if the defendants had commented on the draft index by 30 October, and the bundle had been produced and supplied by 12 November, rather than 17 November. The mere fact that a litigant ceases to be represented cannot by itself justify an adjournment. Litigants in person conduct trials all the time. Unlike the position in some other countries, it is their right to do so, and judges in this jurisdiction are well used to this happening. I do not think that a fair trial cannot be had on this ground.

## **The second ground**

19. The second ground for the application relates to a hospital gynaecology outpatient appointment for the claimant's wife (who gave birth some months ago), at 3 pm on 30 November, during the trial. I do not doubt that the claimant is anxious for the health of his wife. And she is intended to be a witness at the trial. But he gives very little detail of the nature or seriousness of her health problems. In addition, there is no explanation of two important points: (i) the appointment was not rearranged when they were notified of it at the beginning of September, and (ii) there is no-one else to accompany his wife to the appointment (if that is considered necessary).
20. Thirdly, there is no expert medical evidence at all. In accordance with the guidance of Norris J in *Levy v Ellis-Carr* (set out earlier), I would have expected to see much more by way of explanation if this ground were to have any chance of leading to an adjournment of the trial. This is an outpatient appointment, and not (for example) inpatient surgery carrying a significant risk of death or serious injury. In any event, if the claimant really wishes to attend the appointment, and if there is no-one else to do so, I would be prepared not to sit on that afternoon, so as to enable him to attend. But it is not necessary to adjourn the whole trial. A fair trial is still possible.

## **The third ground**

21. Thirdly, the claimant refers to the deaths of "close relatives" in Bangladesh. But, again, the claimant gives no information as to who these relatives are, how "close" they are, when they died, why in these circumstances he cannot prepare for and conduct the trial, and what impact these deaths have had on other aspects of his life, such as his work, his home life, and so on. He does not (for example) say that he has to travel to Bangladesh for any purpose connected with the deaths. I cannot make any assumptions. The burden lies on the applicant for an adjournment. He or she must give sufficient detail to make clear to the court how the applicant is affected. None of this has been done. I am quite unable to say that there cannot be a fair trial of this matter as a result.

## **The effects of an adjournment**

22. On the other side, if there is an adjournment, there will obviously be costs wasted. But costs themselves can normally be dealt with by an appropriate costs order. So that is neutral. Inheritance tax on the estate is overdue. There is significant interest due on the tax, increasing on a daily basis. This too can usually be dealt with by a suitable order. (Different considerations come into play for both costs and debts where there is reason to suppose that the applicant for adjournment will be unable to pay these. It is after all a strong thing to "drive a claimant from the judgment seat" for impecuniosity.)
23. More importantly, however, there will also be delay. The soonest available trial window, as of today, for the High Court, Chancery Division, in London for a trial of six to ten days is 13 January to 16 April 2025. On the face of it, that means that the next available slot for this seven-day trial would be between 14 and 17 months away. That is a long time. The claimant began this

claim on 14 December 2021. It has already taken two years to come to trial. Another 14-17 months would significantly increase both the time that the administration of this estate has already in effect been paralysed, and (if the claim fails) the time during which the beneficiaries are kept out of their inheritance. That is a significant burden on the parties.

24. More than that, the court time (judge, clerks, court room) already allocated to the trial cannot be easily reallocated to other judicial business, and will probably be wasted. That is a significant cost to the public, which cannot be compensated in costs. In the meantime, the claimant will continue to benefit from the (considerable) assets of the estate which he claims now to own.

### **Conclusion**

25. On any view, this is a very late application for the trial to be adjourned. There is an important public interest in the finality of litigation. Leaving the purely financial aspects on one side, which can usually be coped with by the terms of any order, in my judgment the interests of justice come down firmly on the side of refusing any adjournment of the trial on the grounds and material put forward. A fair trial is still possible. It was for those reasons that I decided to refuse this application.