

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2018-04889**

**IN THE MATTER OF AN APPLICATION**

**Under the provisions of the Mental Health Act Ch. 28:02(as Amended)**

**And**

**IN THE MATTER AN APPLICATION pursuant**

**to SS.36, 37, 38 and 39 of the said Mental Health Act Ch.28:02 (as Amended)**

**And**

**IN THE MATTER OF AN APPLICATION by MARJORIE MAHARAJ AND RUBY  
VERA RAMPERSAD the next of Kin of SELVON RAMDATH**

**(a patient and a person suffering from mental disorder and who is mentally ill) to be  
appointed the Committee of the property of the said SELVON RAMDATH and to conduct  
and defend legal proceedings in his name and on his behalf.**

**And**

**SELVON RAMDATH**

**Interested Party**

**Before the Honourable Mr Justice Seepersad**

Date: 20 May, 2021.

Appearances:

1. Ms. Alana Rambaran Attorney-at-law for the Claimant.
2. Ms. Lynette Maharaj S.C., Ms. Tynneille Tuitt and Ms. Keisha Warner, Attorneys-at-law for the Interested Party.

**DECISION:**

1. This Court has to determine the quantum of costs which should be paid to the Interested Party.

**Procedural History:**

2. The Claimants, Marjorie Maharaj and Ruby Vera Rampersad are the sisters of the Interested Party Selvon Ramdath (“the Interested Party”). They filed their Notice of Application on 21 December 2018 seeking to be appointed Committee over their sibling, the Interested Party, pursuant to Sections 36, 37, 38 and 39 of the Mental Health Act Ch. 28:02 (as amended).
3. By order of the Court on 31 January 2019, leave was granted for the Claimants to file a Fixed Date Claim Form (“FDCF”) seeking relief under the Mental Health Act and the Family Law (Guardianship of Minors, Domicile and Maintenance) Act Ch. 46:08.
4. The Claimants filed the FDCF on 14 March 2019 supported by their joint affidavit. By the FDCF the Claimants sought :
  - a. That the said Marjorie Maharaj and Ruby Rampersad (the next of kin of Selvon Ramdath) be appointed the Committee to exercise control over the property and conduct the affairs of Selvon Ramdath.
  - b. That the said Marjorie Maharaj and Ruby Rampersad be authorised to conduct and/or defend legal proceedings in the name of Selvon Ramdath.
  - c. That costs be in the cause.
  - d. Any such orders and or directions which this Honourable Court deems fit.
5. On 20 March 2019 the Interested Party filed a Notice of Application and sought *inter alia*, to be added as a party to the claim and for the FDCF to be struck out. By order of the Court on 4 July 2019, it was ordered, *inter alia*, that Selvon Ramdath be added as an Interested Party to the FDCF and striking out submissions were ordered.
6. On 18 September 2019 the Claimant filed a Notice of Discontinuance pursuant to Part 38.3 CPR 1998 as amended.

7. The Parties thereafter filed submissions as to costs and the matter was reassigned to this Court.

**The Claimants' position:**

8. It is the Claimants' position that the Interested Party is only entitled to a portion of the costs up to the stage of proceedings that this matter had reached i.e. up to and including the service of the defence.
9. The Claimants submitted that the applicable costs regime in these proceedings is the prescribed costs regime pursuant to Rule 67.5(1) and (2) CPR and that the Interested Party's costs should be determined pursuant to Appendix B and C of Part 67 CPR.
10. The Claimants submitted that as no monetary value was placed on the claim, the claim ought to be valued at \$50,000.00 and prescribed costs up to and including the service of the defence at 45% in the sum \$6,300.00 should be ordered.
11. The Claimants further opined that the quantum claimed by the Interested Party is disproportionate, unreasonable and overstated.

**The Interested Party's position:**

12. The Interested Party submitted that based on the particular facts and circumstances of the instant case, the general rule for calculation on a prescribed costs basis is inappropriate. In addition, it was also submitted that Sylvia Samaroo, his sister, ought to be awarded costs although she was not added as a party to the proceedings given that the Claimants made allegations against her.
13. The Interested Party submitted that based on the particular facts and circumstances of this case, the general cost rule would be inappropriate and asked for the award for costs, on an indemnity basis. The Court was asked to award costs to Ms. Samaroo of \$39,368.00 and

to the Interested Party the sum of \$213,997.25. Alternatively the Interested Party asked for costs on the standard basis.

**Resolution of the issue:**

14. In determining the issue the Court had regard to Rule 38.7(1) CPR which states:

38.7(1): The general rule is that, unless an order has been made for budgeted costs under rule 67.8 *the costs shall be determined in accordance with the scale of prescribed costs contained in Appendix B and Appendix C to Part 67.*

(Emphasis Court's)

15. In the **Practice Guide to the Assessment of Costs dated 20 December 2007 at paragraph 6** costs on the standard basis is explained as:

“6. Where the court assesses the amount of costs on the standard basis, for example, on a party and party basis, it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.”

16. The Court also considered its decision **CV2016-02467 Ramdeo Sookdeo Corporal #16157 v The Commissioner of Police** where it previously addressed the issue of costs on an indemnity basis. At paragraph 9 this Court stated:

“9. In any dispute about the appropriate basis for the assessment of costs, the Court must consider the particular factual matrix that is before it. If indemnity costs are sought, the court must review the course of conduct adopted and the circumstances of the case and determine whether the conduct was unreasonable to a high degree.

The conduct of the parties must be viewed with regard to the overriding objective of the Civil Proceedings Rules 1998 as amended (hereinafter referred to as the “CPR”) and with due consideration to the concept of proportionality. The Court should also consider whether its process and/or procedures have been abused and whether the parties have engaged in inequitable conduct. Ultimately, for an award of costs on an indemnity basis, there should exist some exceptional circumstance that has arisen in the manner in which the litigation has been conducted that is not normal and is unusual and the said exceptional circumstance has to be inconsistent with the objectives imposed upon litigants by the provisions of the CPR and/or the obligations that litigants have to the Court.”

17. Regard was also had to the case **Mayor of Burgesses of the London Borough of Southwark v. IBM UK Ltd. [2011] EWCH 653 (TCC)**, where the Court in its determination as to whether costs should have been paid to the Defendants on an indemnity basis said as follows at paragraph 4:

“[4] The following are unexceptionable propositions:

- (a) An award of costs on an indemnity basis was not intended to be penal and regard should be had to what in the circumstances was fair and reasonable.
- (b) Indemnity costs were not limited to cases in which the Court wished to express disapproval of the way in which litigation had been conducted. An order for indemnity costs could be made even when the conduct could not properly be regarded as lacking in moral probity or deserving of moral condemnation.
- (c) The Court’s discretion was wide and generous but there had to be some conduct or some circumstance which took the case out of the norm.
- (d) Such conduct had to be unreasonable to a high degree. ‘Unreasonable’ in that context did not mean merely wrong or misguided in hindsight.

(e) The pursuit of a weak claim would not usually, on its own, justify an order for indemnity costs, but the pursuit of a hopeless claim, or a claim which the party pursuing it should have realized had been hopeless, might well lead to such an order. There was no injustice to a Claimant in denying it the benefit of an assessment on a proportionate basis when the Claimant had showed no interest in proportionality in casting its claim disproportionately widely and requiring the Defendant to meet such a claim.

(f) There was no injustice to a Claimant in denying it the benefit of an assessment on a proportionate basis when the Claimant had showed no interest in proportionality in casting, its claim disproportionately widely and requiring the Defendant to meet such a claim.

(g) If one party had made a real effort to find a reasonable solution to the proceedings and the other party had resisted that sensible approach, then the latter put himself at risk that the order for costs might be on an indemnity basis.

(h) Rejection of a reasonable offer to settle would not of itself automatically result in an order for indemnity costs but where the successful party had behaved reasonably and the losing party had behave unreasonably the rejection of an offer might result in such an order.

(i) Rejection of reasonable offers could of itself justify an order for indemnity costs.”

18. The Interested Party in his submissions said that the Claimant made allegations of dishonesty and impropriety against their sister Ms. Samaroo but failed to provide any evidence in support of same. Further, the Interested Party submitted that the Claimants

made allegations about his mental health and without justification sought to act on his behalf and/or to exercise control over his property and affairs.

19. Jamadar JA (as he then was) in **Civil Appeal No. 45 of 2008 The Chief Fire Officer and The Public Service Commission v Sumair Mohan** at paragraphs 15 to 17 stated as follows:

“15. This is a corollary to the general rule contained in rule 66.6(1) of the Civil Proceedings Rules, 1998, which provide that as a general rule an unsuccessful party pays the costs of the successful party. It is also similar to rule 38.6 (1) which applies where a claimant discontinues by notice. In such a case, unless the Court orders otherwise, he is liable for the costs, which a defendant against whom he discontinued, has incurred or on or before the date on which notice of discontinuance was served on him.

16. But these are all general rules and may be departed from. So that part 66 of the Civil Proceedings Rules, 1998 notwithstanding 66.6(1) referred to above, provides at 66.6 (2) and (3) that the Court may order a successful part to pay all or part of the costs of an unsuccessful party.

*17. Similarly, where a claimant has withdrawn or discontinues the claim, the Court may for good reasons depart from the general rule and make some other order as to costs. The Court must therefore decide in each case whether the general rule should be applied or some other order as to costs should be made. In so deciding, rules 66.6 (4) (5) and (6) are relevant...*”

(Emphasis Court’s)

20. **Zuckerman on Civil Procedure : Principles of Practice 4<sup>th</sup> edition at paragraph 28.273**

the author addressed costs orders in favour of non-parties:

“There are a number of situations in which a party may be ordered to pay the costs of a non-party. A party will normally be ordered to pay the costs of a non-party where the party has obtained an order against a non-party requiring the non-party to perform some act...”

21. In resolving the costs issue the Court addressed its mind, *inter alia*, to the conduct of the parties, complexity of the case, importance of the case, complexity of the issues raised, the amount of money involved and the financial position of the parties.
22. This Court is resolute in its view that the factual matrix which was before the Court was not complex and the issues of law were straightforward. Ms. Samaroo was not required to perform any act based on an order of the Court and it appears that there were assertions against her as the Claimants harboured concerns about her interaction with the Interested Party.
23. Given the operative circumstances, this Court holds the view that Ms. Samaroo who was not a party to the action cannot benefit from a cost order in her favour.
24. This FDCF was filed pursuant to an order of the Court on 31 January 2019 and it was presumably brought for the ultimate welfare and benefit of their brother, the Interested Party, who, according to both Claimants and Ms Samaroo, was unable to read , write and was physically disabled.
25. The proceedings involved the application and interpretation of the Mental Health Act and was fairly routine in nature. With the Interested Party’s intervention it became primarily an issue of fact as to his mental competence and the operative circumstances did not require the significant expertise of learned Senior Counsel.
26. In the context of a familial dynamic and with the Claimants harbouring concerns about their brother’s welfare, a practical and proportionate posture was required.



27. Against that backdrop the costs advanced by the Interested Party are quite frankly excessive and devoid of any measure of proportionality.
28. Cost orders should not be used oppressively to punish parties and where for relatively routine matters an election to retain Senior Counsel is made and where no cost budget is set by the Court, costs cannot be used oppressively to punish or ensnare opposing litigants. It is also not lost upon this Court that in most complex administrative law matters or interpretation claims, cost orders are not usually made in favour of interested parties.
29. No exceptional circumstance manifested itself in the instant matter, the claim was not unreasonable “to a high degree”, it was not cast in disproportionately wide terms, the matter did not amount to an abuse of the Court’s process and there was no evidence of inequitable conduct at least not on the part of the litigants. Additionally, no defence was filed in the matter but a striking out application was filed. The Claimants after the filing of the striking out application and upon actually seeing their brother in court discontinued the claim. The Court noted that the FTR recording revealed that in open court the docketed Judge spoke to the Interested party who indicated that he was fully aware of his affairs and that no one was unduly interfering with him. It is after this hearing that the Claimants discontinued the matter. The Court also noted that it appears prior to the institution of the claim, the Claimants’ access to their brother was restricted and they subjectively had concerns as to his well-being. After the exchange in Court the matter was discontinued without further imposition upon the Court’s limited resources.
30. In the exercise of its general discretion and mindful of its obligation to resolve disputes justly, fairly, reasonably, proportionately and in a manner which is consistent with the overriding objectives, the Court finds that there exists no justification for it to depart from the general rule outlined under Part 67.5 of the CPR and for it to award costs on an indemnity or standard basis.

31. Accordingly, and for the reasons outlined the Claimants shall pay to the Interested Party costs in the sum of \$6,300.00.

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**FRANK SEEPERSAD**  
**JUDGE**