

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

M736 of 1990

BETWEEN

LYSTRA LINETTE MANOHAR-MAHARAJ

PETITIONER

AND

SHASTRI KUMAR MANOHAR-MAHARAJ

RESPONDENT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. I. Harracksingh for the Petitioner

Mr. Devindra Rampersad for the Respondent

JUDGMENT

On 9th February 2007 an application was filed on behalf of the Petitioner seeking a review of the costs certified in her favour by the Deputy Registrar, whose decision is set out in a written judgment dated 30th January 2007. On 16th February 2007 the Respondent filed an appeal against the decision of the Deputy Registrar, raising a number of issues. This certification by the Deputy Registrar, sitting as a taxing officer, came about as a consequence of a decision of the Court of Appeal awarding the Petitioner her costs of an appeal.

When the proceedings came before me it was agreed that I would hear and decide, as a preliminary point, whether the proceedings before me were properly the subject of an appeal to a Judge in Chambers or of a review before the Taxing Officer. Full written submissions were filed on behalf of the parties.

The Background

On 9th May 1997 the Court of Appeal decided in favour of the Petitioner on an interlocutory appeal and awarded her the costs of that appeal. The bill of costs, however, was not filed until 3rd January 2002 and it was not until the Respondent's Attorney-at-law raised the issue that an application to extend the time was filed on 19th November 2002.

The Respondent objected to the application to extend the time for filing the bill of costs and the Petitioner raised the issue of the Respondent having waived his right to object to the extension of time by taking a fresh step in the proceedings after the bill of costs had been filed. From the file that appears that the Respondent filed a motion in the Court of Appeal on 5th June 2002 to set aside its decision of 9th May 1997 and this was dismissed on 29th July 2002. It further appears that the Respondent then applied to the Court of Appeal on 16th August 2002 seeking conditional leave to appeal to the Privy Council against the Court of Appeal's decision of 29th July 2002, but this was subsequently withdrawn on 25th November 2002.

On 30th January 2007 the Deputy Registrar gave his decision orally and subsequently reduced it into writing. In essence, and leaving aside the other issues raised and dealt with by him, he certified under the provisions of Order 62 Rule 21(3) that costs be awarded to the Petitioner in the amount of \$26,000.00 as some other sum in lieu of taxation.

The Submissions

In essence, it is submitted on behalf of the Respondent that Order 62 Rules 33, 34 and 35 of the Rules of the Supreme Court, 1975 require that there first be a review by the taxing officer before invoking the jurisdiction of a Judge in Chambers. On behalf of the Petitioner it is submitted that the provisions of those Rules provide

only for a review where party is dissatisfied with the allowance or disallowance of any item in a bill of costs by a taxing officer, and that the provisions of Order 62 Rule 35 do not apply to the issue of extending the time for filing the bill of costs, the issue of waiving of that irregularity; the exercising by the taxing officer of his discretion under Order 62 Rule 21(3) and the award of a total sum of \$40,000.00, albeit the taxing officer reduced this ultimately to \$26,000.00. These are the issues raised by the Respondent arising out of the Deputy Registrar's decision.

Disposition

Order 62 Rule 35 deals specifically with instances in which a party is dissatisfied with a decision of a taxing officer either to allow or disallow any item in whole or part, after a review by the taxing officer under the provisions of Order 62 Rules 33 and Rule 34. It provides that an application may be made to a Judge for an order reviewing the taxation.

Order 58 Rule 1 provides for appeals from a Registrar to a Judge in Chambers. It reads as follows:

"Except as provided by Order 62, rule 35, any person aggrieved by an order or decision by a Registrar or an Assistant Registrar in the exercise of the jurisdiction conferred on him by Order 32, rule 18, may appeal therefrom to a Judge in Chambers".

Order 32 Rule 18 sets out the jurisdiction of the Registrar. It provides as follows:

"18(1) the Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a Judge in Chambers in respect to the following matters, that is to say –

(a) *applications for the taxation and the delivery of bills of costs, taxation of bill of costs, and applications for ...*".

Applications for the review of a taxation are made initially to the taxing officer. Thereafter, if a party is still dissatisfied with the decision of a taxing officer, an application is to be made to a Judge. These applications are specifically excised from the appeals which can be made to a Judge in Chambers under the provisions of Order 58 rule 1(1). Similarly, where costs are certified under the provisions of Order 62 rule 21(3) the appropriate procedure for ventilating disagreement is a review, and not an appeal – see e.g. *Jones v. Roberts* The Times 2nd August 1986 (a transcript of which was supplied by the Petitioner's attorney-at-law).

While it may be arguable that any matter touching on or connected to a review should be included as part of that review, it does not appear to be the intention of Order 62 rule 35, nor is it the effect of that rule. Applications for an extension of time to file a bill of costs, for example, may fall within the jurisdiction of the taxing officer as a consequence of Order 62 rule 16, and is a separate procedure from that of the taxation itself or of any review of the taxation. A challenge to the decision of a taxing officer on a procedural matter such as to adjourn a matter or extend time, however, should be made to a Judge in chambers even if there is no specific right of appeal, in which event the appeal will be dealt with under the Court's inherent jurisdiction (see *Marcos & Ors. v. Marcos (Ipswich) Ltd. & Ors.* [1996] 1WLR 145).

In the event, I have come to the conclusion that:

1. the issues of extending the time for filing the bill of costs; the waiver of irregularity; and whether the provisions of Order 62 rule 21(3) can be invoked by a taxing officer voluntarily; are properly the subject of an appeal to a Judge in Chambers;

2. the issue of the amount certified by a taxing officer, if it were to be held that he could invoke the provisions of Order 62 rule 21(3) voluntarily, are properly the subject of a review by the taxing officer.

On Mr. Harracksingh's application on behalf of the Respondent I granted leave to appeal.

11th July 2007

CVH Stollmeyer
Judge