

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV 2015-00666

BETWEEN

**RAJENDRA JAMOUNA**

**BOOLAMUATH SONNY**

**HARRYNARINE RAMESH**

**FRANK JAGROO**

**KRISHANA RAMLOCHAN**

**BALRAJ PERSAD**

**SUKHIYA RAMDIAL**

**RATTAN JAGROO**

Claimants

AND

**DARIO DES ETAGES**

Defendant

**Before the Honourable Madame Justice Quinlan-Williams**

**Appearances:**

Claimants: Mr. Haresh Ramnath.

Defendant: Mr. Ronnie Persad instructed by Ms Amina Hasnain-Mohammed.

**REASONS FOR DECISION ON COSTS**

1. The issue of costs was decided following the court's decision delivered on the 6<sup>th</sup> of July 2017 on preliminary points raised by the defendant. In arriving at its decision the court considered the submissions filed by the claimants on the 30<sup>th</sup> of October 2017

and the defendant on the 31<sup>st</sup> of October 2017. Following are the reasons for the court's decision on costs.

2. The issues for the court's consideration were:
  - a. Which party should pay costs;
  - b. What is the value of the claim for costs assessment and quantification; and
  - c. What is the assessed costs of the preliminary application.
  
3. On the first issue, which party should pay costs, the court considered the **Civil Proceedings Rules (CPR)**. The relevant part of the **CPR Rule 66.6** appears below:

***Successful party generally entitled to costs***

- (1) If the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.*
  
- (2) The court may, however, order a successful party to pay all or part of the costs of an unsuccessful party.*
  
- (3) This rule gives the court power in particular—*
  - (a) to order a person to pay only a specified proportion of another person's costs;*
  
  - (b) to order a person to pay costs from or up to a certain date only; or*
  
  - (c) to order a person to pay costs relating only to a certain distinct part of the proceedings,*

*but the court may not make an order under paragraph 3(b) or 3(c) unless it is satisfied that an order under paragraph 3(a) would not be just.*
  
- (4) In deciding who should be liable to pay costs the court must have regard to all the circumstances.*
  
- (5) In particular it must have regard to –*
  - (a) the conduct of the parties;*

*(b) whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;*

*(c) whether it was reasonable for a party—*

*(i) to pursue a particular allegation; and/or*

*(ii) to raise a particular issue;*

*(d) the manner in which a party has pursued—*

*(i) his case;*

*(ii) a particular allegation; or*

*(iii) a particular issue;*

*(e) whether a claimant who has won his claim caused the proceedings to be defended by claiming an unreasonable sum; and*

*(f) whether the claimant gave reasonable notice of his intention to issue a claim.*

*(6) The conduct of the parties includes—*

*(a) conduct before, as well as during, the proceedings, and in particular the extent to which the parties complied with any relevant pre-action protocol; and*

*(b) whether either or both parties refuse unreasonably to try an alternative dispute resolution procedure.*

*(Rule 67.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review)*

4. The defendant has relied on the case of **BS v. Her Worship Magistrate Marcia Ayers-Caesar and the AG**<sup>1</sup> which states that costs follow the event is a starting point from which the court can depart. The Defendant also submitted that the court must have regard to the principles codified in the **CPR Part 66.6 (4) (5) (6)**. In the abovementioned case Kokaram J said the court in:

---

<sup>1</sup> CV 2015-02799

*Exercising this wide discretion in considering “all the circumstances” on the issue of costs calls then for the Court to take a fresh panoramic view of the landscape of the litigation after the dust is settled post judgment. Rule 66.6 (5) (6) CPR conveniently describe what I consider to be three main signposts when the Court reviews the litigation landscape: the conduct of the parties, success on issues and reasonableness of party’s actions in the litigation. (paragraph 11)*

5. On this issue the defendant submits that it was reasonable for him to pursue all three preliminary points as each dealt with a distinct procedural aspect of the claimant’s claim, the defendant was successful on all three preliminary points. Further, the defendant submitted that the applications were the first opportunity for the defendant to articulate these points as no pre-action protocol communication were sent from the claimants to the defendant. The defendant also submitted that they raised the issues as possible during the proceedings. The claimants’ submission is that the court should “arrive at a figure that is fair to both sides”<sup>2</sup>. The court accepted the submissions made by the defendant. After a panoramic view of all the circumstances the court was satisfied that costs should follow the event. All the relevant circumstances, which the court has considered in this case, raises nothing which satisfies the court that it should depart from the starting point. These included the behaviour of the parties before the claim was filed, the time when the application was made and the importance of the application. The court also considered that the sole defendant was called upon to answer the claim of eight (8) claimants. Therefore the court is satisfied that the claimants are to pay the defendant’s costs of the claim and the application.
  
6. The second issue for the court’s determination was the basis or bases for assessing the defendant’s costs. The claimants’ claim was not for a specified sum of money. The **CPR Rule 67.5 (1)** makes provision for those circumstances where costs is to be quantified and assessed under a prescribed costs regime. The first step is to quantify the value of the claim. This is done by reference to the **CPR Rule 67.5 (2)**:

---

<sup>2</sup> Paragraph 6 of Claimants’ submission on costs

### **Prescribed costs**

*67.5 (1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)–(4) of this rule.*

*(2) In determining such costs the “value” of the claim shall be decided—*

*(a) in the case of a claimant, by the amount agreed or ordered to be paid;*

*(b) in the case of a defendant—*

*(i) by the amount claimed by the claimant in his claim form; or*

*(ii) if the claim is for damages and the claim form does not specify an amount that is claimed, by such sum as may be agreed between the party entitled to, and the party liable for, such costs or if not agreed, a sum stipulated by the court as the value of the claim; or*

*(iii) if the claim is not for a monetary sum, as if it were a claim for \$50,000.*

*(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentage specified in column 2 of Appendix B against the appropriate value.*

*(4) The court may, however—*

*(a) award a percentage only of such sum having taken into account the matters set out in rule 66.6(4), (5) and (6); or*

*(b) order a party to pay costs—*

*(i) from or to a certain date; or*

*(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the percentage of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.*

7. The defendant submitted that since the claim was a “mixed claim” that sought both damages, a declaration and an injunction the value of the claim needed to reflect this. The defendant relied on **Lutchmeesingh’s Transport Contractors Ltd. and National Infrastructure Development Company Ltd**<sup>3</sup>. With respect to the claim for a declaration and an injunction, the value of the claim should be the sum of Fifty Thousand Dollars (\$50,000.00) as provided by the **CPR Rule 67.5(2)(b)(iii)**.
8. With respect to the other part of the claim, the claim for damages, the defendant submitted that the court must stipulate the value of the claim to be in a position to quantify the costs. In arriving at a value the court must, not engage in a de facto assessment of damages exercise. The Defendant submitted that the court must seek to give effect to the overriding objective of the CPR and use the evidence before it. In this regard the defendant relied on the authority of **Lutchmeesingh’s Transport Contractors Ltd. and National Infrastructure Development Company Ltd (supra)**.
9. The defendant submitted that the court could get assistance from the claimants’ pleadings under the head “Particulars of Damage”. Under this head, the total value alleged for the five houses alleged to be destroyed is One Hundred and Twenty Five Thousand Dollars (\$125,000.00). The defendant submits that the court should use this value. In relation to the allegations for damage to crops and trees no value was pleaded. The defendant referred the court to the case of **Lutchmeesingh’s Transport Contractors Ltd. and National Infrastructure Development Company Ltd (supra)** where Kokaram J used the sum of \$50,000.00 as nominal value since. The defendant here submitted that an appropriate nominal value is the sum of Fifteen Thousand Dollars (\$15,000.00) for each of the eight claimants for a total nominal value of One Hundred and Twenty Thousand Dollars (\$120,000.00).
10. The claimants have not specifically addressed these issues of prescribed costs in their submission. The claimants submitted that the court should “arrive at a figure that is fair to both sides” (supra).

---

<sup>3</sup> Claim No: CV 2015-01192

11. The court was satisfied with the defendant’s submissions, that prescribed costs is the appropriate and applicable part of the costs regime, that the quantification suggested is appropriate and reasonable in circumstance of the claim and the claimants pleadings. In the circumstances the court has determined that the prescribed cost totals the sum of Two Hundred and Ninety Five Thousand Dollars (\$295,000.00) the breakdown shown in Table 1 below:

Table 1 Valuation of Claim

CLAIM VALUATION	VALUE
Declaratory/injunctive relief	\$50,000.00
Damage to houses – per Statement of Case	\$125,000.00
Damage to crops - \$15,000 per claimant	\$120,000.00
TOTAL	\$295,000.00

12. In accordance with **the CPR Part 67 Appendix B**, the Scale of Prescribed Costs for the claim which the court has valued at Two Hundred and Ninety Five Thousand Dollars (\$295,000.00) is shown in Table 2 below:

Table 2 Scale of Prescribed Costs

Value of Claim	Percentage Value
First 30,000.00 at 30%	\$9,000.00
Next \$20,000 at 25%	\$5,000.00
Next \$50,000.00 at 20%	\$10,000.00
Next \$150,000.00 at 15%	\$22,500.00
Next \$45,000.00 at 10%	\$4,500.00
TOTAL	\$51,000.00

13. The application was heard and determined at the Case Management Stage (CMC). In accordance with the **CPR Part 67 Appendix C**, computation at the CMC stage is 55% of the prescribed costs. Fifty five percent (55%) of Fifty One Thousand Dollars (\$51,000.00) is equal to Twenty Eight Thousand and Fifty Dollars (\$28,050.00).

14. The third issue for the court was to assess the costs of the preliminary application. The assessed costs is calculated in accordance with the **CPR Rule 67.11**, this provides as follows:

*(1) On determining any application except at a case management conference, pre-trial review or the trial, the court must—*

*(a) decide which party, if any, should pay the costs of that application;*

*(b) assess the amount of such costs; and*

*(c) direct when such costs are to be paid.*

*(2) In deciding what party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.*

*(3) The court must, however, take account of all the circumstances including the factors set out in rule 66.6(5) but where the application is—*

*(a) one that could reasonably have been made at a case management conference or pre-trial review;*

*(b) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;*

*(d) an application to amend a statement of case; or*

*(e) an application for relief under rule 26.7,*

*the court must order the applicant to pay the costs of the respondent unless there are special circumstances.*

*(4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.*

15. The defendant submitted that the costs, here, should also follow the event. Therefore, with respect to the defendant's costs for the determination of the preliminary points, the justice of the case is that the claimants should pay the defendant's costs. The claimants did not specifically address this issue but submitted that the court should "arrive at a figure that is fair to both sides" (supra). The court was satisfied, for the



reasons outlined earlier in the decision, that the claimants should bear the costs of the defendant on the preliminary points.

16. The defendant submitted that it was reasonable for the defendant to have an advocate and an instructing attorney. The court agreed, there were eight claimants and the issues raised were legally complex. The sum assessed as costs, must be such sums that the Court deems to be reasonable considering the work to be carried out by Attorneys at Law of reasonable competence and which appears to the Court to be fair both to the person paying and the person receiving such costs. On that exercise of determining a reasonable sum, Kokaram J said in **Lutchmeesingh's Transport Contractors Limited and National Infrastructure Development Company Limited** supra):

*As a general principle, the Court's discretion as to the amount of costs allowed must be exercised consistently with the overriding objective, Rule 1.2. In so doing the Court engages in an exercise to ascribe an appropriate fee which is proportionate to the amount of work involved, the importance of the case, the complexity of the issues and the financial position of each party. An important aspect of the exercise is the principles of proportionality. (Paragraph 13)*

17. On the issue of proportionality, Mendonca JA said in **Scotiabank Trinidad and Tobago Limited v Bank Employees Union**<sup>4</sup>:

*However, costs must not only be reasonably incurred and reasonable in amount but should also be proportionate. What proportionality seeks to do is to impose a sensible correlation between the costs a party may recover and the claim. It acts as a counter-weight to disproportionately high costs....(Paragraph 49)*

18. With respect to the approach that the court should take, Mendonca JA, in **Scotiabank Trinidad and Tobago Limited v Bank Employees Union (supra)**, applied the two stage approach used in **Lownds v Home Office Practice Note**<sup>5</sup>:

*The first stage is the global approach and the second an item by item approach. In the first stage the Court is required to form a preliminary opinion whether*

---

<sup>4</sup> Civil Appeal No. 187 of 2010

<sup>5</sup> [2002] EWCA Civ 365

*the total costs claimed were proportionate having regard to the considerations referred to earlier. The next stage is an item by item approach. If the Court is of the opinion that the costs are not disproportionate, all that is required is for the Court to determine whether each item claimed was reasonably incurred and whether the amount claimed for it is reasonable. If however the Court at the global stage were to find the costs disproportionate the manner of assessment is more rigorous. Then the receiving party will be required at the item by item stage to satisfy the Court that each item of costs was necessarily incurred and, if so, the amount charged therefore is reasonable. (Paragraph 53)*

19. The court has determined that the claimants are to pay to the defendant the assessed costs of the preliminary application. Where this court has a discretion in determining the sum of the award, as with assessed costs, the court has considered the basis of quantification of such costs as outlined in the **CPR Rule 67.2:**

***Basis of quantification***

*67.2 (1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney-at-law of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs.*

*(2) Where the court has any discretion as to the amount of costs to be paid to an attorney-at-law by his client, the sum allowed is the amount that the court deems to be reasonable and which appears to be fair both to the attorney-at-law and the client concerned.*

*(3) In deciding what would be reasonable the court must take into account all the circumstances, including—*

- (a) any orders that have already been made;*
- (b) the conduct of the parties before as well as during the proceedings;*
- (c) the importance of the matter to the parties;*
- (d) the time reasonably spent on the case;*
- (e) the degree of responsibility accepted by the attorney-at-law;*
- (f) the care, speed and economy with which the case was prepared;*
- (g) the novelty, weight and complexity of the case; and*

*(h) in the case of costs charged by an attorney-at-law to his client—*

*(i) any agreement that may have been made as to the basis of charging;*

*(ii) any agreement about what grade of attorney-at-law should carry out the work; and*

*(iii) whether the attorney-at-law advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.*

20. This issues raised in the preliminary application were critically important especially as it was the first opportunity the defendant had to address the issues to the other side. If the defendant was to be successful, as he was, the preliminary application would bring the matter to an end without the matter having to advance to a trial. In terms of complexity, matters raised were at the higher end of the spectrum of a complexity scale from not complex to most complex. The defendant submitted, and the court accepted, that the appropriate brackets for assessing costs payable to the attorneys is Two Thousand Eight Hundred and Fifty Dollars (\$2850.00) per hour and One Thousand Nine Hundred and Fifty Dollars (\$1950) per hour respectively. These brackets are contained in The Second Practice Guide to the Assessment of Costs<sup>6</sup>.

21. The court considered the statement of costs submitted by the defendant and the submissions and representations made by both the defendant and claimants. The court also considered those matters under the **CPR Rule 67.11** including the representations as to the time that was reasonably spent in making the application, and preparing for and attending the hearing. The court is also mindful that it must allow such sum as it considers fair and reasonable.

22. The court closely examined the statement of costs submitted by the defendant in Appendix A and B attached to the submission. Applying the first stage of the test, to the statement of costs, the global approach outlined by Mendonca JA in **Scotiabank Trinidad and Tobago Limited v Bank Employees Union (supra)**. Also considering the

---

<sup>6</sup> Trinidad and Tobago Gazette, October 22, 2015.

nature of the claim, the court has concluded that the statement of costs incurred by the defendant for the (the preliminary points) is fair and proportionate. The court did not therefore applying the second stage of the test outlined by Mendonca JA in **Scotiabank Trinidad and Tobago Limited v Bank Employees Union (supra)**. This costs is therefore assessed at Sixty Five Thousand One Hundred and Seventy Five Dollars (\$65,175.00).

23. In the circumstances therefore, the court ordered that:

- a) The claimants are to pay the defendant's prescribed costs and assessed costs of the application to determine the preliminary points in the determined sums;
- b) The prescribed costs of the claim in the sum of Twenty Eight Thousand and Fifty Dollars (\$28,050.00); and
- c) The assessed costs of the application to determine the preliminary points in the sum of Sixty Five Thousand One Hundred and Seventy Five Dollars (\$65,175.00).

**JUSTICE QUINLAN-WILLIAMS**  
**JUDGE**

(Leselli Simon-Dyette - Judicial Research Counsel)