

IN REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 243 OF 2009

MAHADEO PERSAD

Appellant

AND

TRINIDAD CONTRACTORS LIMITED

Respondent

**PANEL: A. Mendonça, J.A.
G. Smith, J.A.
M. Rajnauth-Lee, J.A.**

**APPEARANCES: Mr. T. Roopnarine for the Appellant
Mrs. C. Ramjohn-Hosein for the Respondent**

DELIVERY DATE: November 5th, 2012

JUDGMENT

Delivered by A. Mendonça, J.A.

1. This is an appeal from the order of Assistant Registrar, Ms. Margaret Sookraj-Goswami, dismissing the Appellant's bill of costs. The bill of costs was filed by the Appellant pursuant to an order made by Best J on January 6th, 2005. This order was made on an application by the Appellant to amend the writ and the statement of claim to

add the Second defendant (Association of Accounting Technician of Trinidad and Tobago, which is not a party to this appeal) as a party to the proceedings. The amendment was granted and Best J. ordered that costs of the application be costs in the cause.

2. The action came on for trial on December 15th, 2008 before Shah J. On that date a consent order was made that judgment be entered in favour of the Appellant with damages to be assessed by a Master on a date to be fixed. Liability was apportioned between the parties. It was agreed that the Respondent pay 70% of the Appellant's claim and the Second Defendant 30%. The order further provided by consent for the payment of costs to the Appellant. The Respondent was by consent ordered to pay to the Appellant 70% of his costs of the action agreed in the sum of \$17,500, and the Second Defendant was ordered to pay the Appellant 30 % of his costs of the action agreed in the sum of \$7,500.

3. On February 27th, 2009 the Appellant filed a bill of costs pursuant to the order of Best J with respect to the order for costs made on the application to amend the writ and statement of claim. The bill of costs came before the Assistant Registrar for taxation but she made an order dismissing it and subsequently gave written reasons for so doing. In her reasons the Assistant Registrar stated that an order that 'costs be costs be in the cause' meant that the costs of interlocutory proceedings were to be awarded according to the final award of costs in the action. Therefore, the plaintiff who succeeded in the action would get his costs of the interlocutory proceedings as part of his costs of the action against the defendant.

4. The Registrar concluded that when Shah J on the determination of the matter, on the 15th December, 2008, ordered that the Respondent do pay the Appellant 70 % of his costs of the action agreed in the sum of \$17,500 and the Second Defendant do pay 30 % of his costs of the action agreed in the sum of \$7,500, that these sums included the interlocutory matter heard by Best J on the 6th January, 2005, whereby he ordered that costs be costs in the cause.

5. The Appellant submits that the Assistant Registrar was wrong to make the order dismissing the bill of costs because the costs agreed by consent did not encompass the costs of the amendment. The Appellant argues that the costs agreed by consent related to the liability part of the proceedings and the costs that were associated with bringing the trial on liability to a conclusion. He contends therefore that the order cannot encompass an order made on a procedural application which had no connection with resolving the issue of liability. The issue before Shah J was separate and distinct from the issues before Best J. Conversely, the Respondent contends that the Assistant Registrar was correct to dismiss the bill of costs submitting that the consent order of Shah J had determined the final award of costs of the action and that this order extended to all of the Appellant's costs including the costs of the interlocutory application.

6. The Respondent also, however, takes a preliminary objection contending that the appeal is not properly before this Court. The appeal should have been made to a judge of the High Court sitting in Chambers and not the Court of Appeal. The Appellant, to the contrary, submits that the appeal is properly before this Court and contends that this Court has jurisdiction to hear the appeal. This issue of jurisdiction would be looked at firstly.

7. Section 67 of the Supreme Court of Judicature Act is relevant here. Section 67 (1) is as follows:

“(1) The Registrar shall have power and jurisdiction to do such of the things and transact such of the business as by virtue of any written law, or by custom, or by the Rules and practice of the High Court, are done and transacted by a Judge of the High Court sitting in Chambers as may from time to time be prescribed by Rules of Court; but the Registrar shall have no jurisdiction in respect of matters relating to the liberty of the subject.

(2) A person affected by any order or decision of the Registrar sitting in Chambers may appeal to the High Court or to the Court of Appeal, as the case may be, in such cases as may be provided for by Rules of Court. The Rules of Court relating to appeals from the Registrar to the High Court or to the Court of Appeal, shall be:

- (a) *in the case of the High Court, such as are prescribed by Rules of Court; and*
- (b) *in the case of the Court of Appeal, the Rules of Court relating to appeals from a Judge in Chambers”.*

8. Relevant also is section 70 of the Supreme Court of Judicature Act which states that:

“Any act done or document signed by the Registrar, the Deputy Registrar or an Assistant Registrar shall not be liable to objection on the ground that it ought to be done or signed by another of them”.

So the jurisdiction in other words is exercisable by the Registrar or the Assistant or Deputy Registrar as the case may be. It is therefore nothing to the point that in this case the order was made by an Assistant Registrar.

9. The effect of those sections seems to me to be clear. The rights of appeal by persons affected by decisions made by the Registrar/Assistant Registrar within their jurisdiction are set out in the rules of court. So we must look to the rules of court to determine whether this Court has jurisdiction to hear appeals from decisions of an Assistant Registrar. In this matter the relevant rules are the Rules of the Supreme Court 1975 (the RSC).

10. The jurisdiction of the Registrar, which includes the Deputy Registrar and every Assistant Registrar (see RSC O.32 r.17), is outlined at O.32 r.18. So far as is material O.32 r.18(1) (a) provides that:

"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 of the following matters, that is to say:-

- (a) *applications for the taxation and delivery of bills of costs, taxation of bills of costs, and applications for the delivery by any*

solicitor of deeds, documents and papers."

So that rule therefore provides that the Assistant Registrar has jurisdiction to deal with, inter alia, applications for the taxation and delivery of bills of costs and the taxation of bills of costs.

11. Appeals from the Registrar and Assistant Registrars are dealt with in O.58 of the RSC. O.58 r.1 states that "Except as provided by Order 62, rule 35, [which deals with the review by a Judge of a taxing officer's certificate and is not relevant to this appeal], any person aggrieved by an order or decision of the Registrar or Assistant Registrar in the exercise of the jurisdiction conferred on him by Order 32, rule 18, may appeal therefrom to a Judge in Chambers."

12. Order 59 deals with appeals to the Court of Appeal. O.59 r.2 provides, inter alia, that O.59 applies to every appeal to the Court of Appeal not being an appeal for which other provision is made by the Rules. O.58 provides for appeals from the Registrar and Assistant Registrar in relation to decisions made by them in relation to matters within O.32 r.18, which applies to the present case.

13. It seems therefore that when sections 67 and 70 of Supreme Court of Judicature Act are read together with Orders 58 and 59 of the RSC, the appeal from the order of the Assistant Registrar lies not to this Court but instead to a Judge in Chambers. An appeal from the decision of the Judge in Chambers would then lie to this Court.

14. This Court is therefore of the view that the preliminary objection raised by the Respondent should be upheld. This Court does not have the jurisdiction to hear this appeal from the order of the Assistant Registrar. This conclusion is sufficient, to dispose of the appeal but we will nevertheless refer to the substantive issue raised on the appeal.

15. This Court accepts the definitions of 'costs in the cause' relied on by the Registrar who referred to the comments of Lord Denning MR in **JT Stratford & Son Ltd v**

Lindley and Others (No. 2) [1969] 3 All ER 1122, 1123, that ‘costs in the cause’ means that “the costs of those interlocutory proceedings are to be awarded according to the final award of costs in the action. If the plaintiff wins and gets an order for his costs, he gets those interlocutory costs as part of his costs of the action against the defendant.” So that, where, as in this case, an order for costs of the action is made in favour of the Appellant, that order will include the costs of the application to amend. The Court does not need to specifically order that those costs are included.

16. There is in our view no ambiguity in what ‘costs in the cause’ means and it captures in this case, the costs of the application to amend the writ and statement of claim. The only occurrence in this case that might have raised any doubt is the fact that when the matter came on for trial, the parties agreed on the question of liability and so split the trial and dealt with the assessment of damages separately. It is arguable that an order for costs of the action would include the assessment as well. However the undoubted practice in this jurisdiction in such cases is for the Court to deal separately with the costs of the assessment. Costs of the action in such cases include therefore all costs incurred up to the date of the order, which would include the application to amend. The costs of the assessment are dealt with separately by the Judge or Master hearing the assessment.

17. Assuming, however, there was some ambiguity as to what ‘costs in the cause’ meant, and counsel for the Appellant were correct in that ‘costs in the cause’ would refer to the liability part of the proceedings, the amendment to the writ to add a party and the consequential amendments to the statement of claim had as much to do with liability as it did with the assessment of damages. Whether the costs of the application to amend were included in the order for costs of the action would therefore have depended on whether it was agreed between the parties. The Appellant’s contention is that they were not included in the agreed sum; the Respondent’s position is different. In the face of the different views as to what costs were included in the consent order, the proper course would have been to make an application to set aside the consent order on the grounds that the parties were not ad idem. It is relevant to note that any such application may impact not

only on the costs element but the entire consent order, because it may be argued by the Respondent that when it agreed to a particular sum for costs, that sum was to reflect the entire costs of the action, including the costs of the application to amend, and it would not have agreed on liability if it knew that it would later be faced with a bill of costs on the amendment application.

18. For the above reasons, the appeal is dismissed. The Appellant shall pay the Respondent's costs of the appeal to be taxed.

November 5th, 2012

A. Mendonça,
Justice of Appeal

G. Smith,
Justice of Appeal

M. Rajnauth-Lee,
Justice of Appeal