

I have read the judgment of Jones J.A. and I agree.

**Moosai J.A.
Justice of Appeal**

I too agree.

**des Vignes J.A.
Justice of Appeal**

JUDGMENT

Delivered by J. Jones, J.A.

1. This is an appeal from an order for costs made by the Trial Judge on a judgment on admissions. The application before the Judge was made pursuant to part 14.3 of the Civil Proceedings Rules 1998 as amended (the CPR) and the inherent jurisdiction of the court. The Judge ordered judgment in the sum of \$28,809,084.87 and awarded costs to be quantified by him pursuant to rules 67.4 and 67.11 of the CPR. These costs have not as yet been quantified. The Respondent accepts that the Appellant was entitled to a judgment on admissions and to the costs associated with such a judgment. The issue in dispute before the Trial Judge and before us is the costs regime to be applied to a successful party on an application for judgment on admissions pursuant to rule 14.3 of the CPR.
2. The Judge determined that fixed costs was applicable to the judgment but interpreted the rule as allowing him to make an order not solely based on the appropriate tables but on the basis that “some other amount” was payable in addition to the costs identified in the tables. These additional costs he determined to be costs “quantified pursuant to the provisions of part 67.4(3) in accordance with part 67.11 and should include all work and

expenses relating to the admitted portion of the claim.” These costs are as yet to be quantified. The Respondent does not challenge the finding of the Judge that the Appellant was entitled to costs over and above that computed in accordance with the sums identified in the table.

3. Essentially the Appellant submits that the Judge erred when he determined that no distinction was to be drawn between a judgment on admissions made pursuant to part 14.1 and a judgment on admissions made pursuant to an application under part 14.3 of the CPR and that fixed costs were not restricted to the circumstances described in rule 14.1 but also applied to applications under rule 14.3. In essence it submits that on a plain and grammatical reading of the Part a distinction affecting the cost regime to be applied is made between applications made pursuant to rule 14.1 and rule 14.3.
4. Part 14 deals with judgments on admissions, that is, it identifies the circumstances where a claimant will be entitled to judgment without a trial as a result of an admission of liability of the whole or part of the claim by the defendant. It entitles the claimant to one of two types of judgment: a judgment obtained over the counter, that is, from the Court Office without the need of the input of a judge and a judgment obtained from a judge. The Part also provides the means by which a defendant may obtain time to pay the judgment so admitted. As we will see while part 14 permits judgments on admissions in both money claims and non-monetary claims it treats money claims differently than non-monetary claims.
5. **Rule 14.1** states:
 - “14.1 (1) A party may admit the truth of the whole or any part of any other party’s case.
 - (2) He may do this by giving notice in writing (such as in a statement of case) before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by entering an appearance containing the admission.

(4) He may do this in accordance with the following rules-

(a) rule 14.4 (admission of whole claim for specified sum of money);

(b) rule 14.5 (admission of part of a claim for a specified sum of money);

(c) rule 14.6 (admission of liability to pay whole of claim for unspecified amount of money); or

(d) rule 14.7 (admission of liability to pay claim for an unspecified amount of money where defendant offers a sum in satisfaction of the claim.)

(5) Upon the defendant paying to the claimant the specified sum claimed together with interest and the appropriate fixed costs, as shown on the claim form the claim is stayed.

(Part 67 Appendix A, Table 1 sets out the fixed costs)"

6. Essentially rule 14.1 does three things. First it identifies the ways in which a party to an action may make an admission under the Part. This can be done in one of two ways: by a notice in writing made before or after the issue of the claim (this includes an admission made in the defendant's statement of case) and, where the claim is for a sum of money and the defendant admits the whole or part of the claim, in the appearance filed.

7. Secondly, by rule 14.1(4), it identifies rules applicable to admissions by a party. The list of rules identified here is not exhaustive and does not include rule 14.3. With the exception of rule 14.4, all of the rules identified by rule 14.1(4) treat with money claims, they all allow for a judgment to be obtained from the Court Office (an over the counter judgment) and all of them apply fixed costs to the judgment obtained.

8. **Rule 14.4** treats with the admissions in a money claim made in an appearance and simply requires that in those cases the Court Office must serve a copy of the admission on the claimant. **Rule 14.5** applies where the admission is made either in the appearance or the defence and is to the whole of the amount claimed. It requires the claimant to make a request to the court office for judgment for the amount claimed, interest and fixed costs.

9. **Rule 14.6** applies where the admission is made by the defendant to a specified amount of money in his appearance or in his defence. In the context of the rule the use of the words ‘specified sum of money’ must refer to a portion of the money claimed. The rule requires the claimant to indicate to the court office whether the amount is accepted in satisfaction of the whole claim or whether the proceedings are to continue. Where the claimant accepts the sum in satisfaction of the whole claim and the defendant has not requested time to pay the claimant may file a request for judgment at the court office for the amount admitted, interest and fixed costs. Where the claimant requires the proceedings to continue the matter is fixed for a case management conference before a judge. In these circumstances no judgment is entered.

10. **Rule 14.7** applies where the only remedy the claimant seeks is the payment of money and the amount claimed is not specified, the defendant admits liability in the appearance but does not make an offer to pay a specified sum of money in satisfaction of the claim or file a defence stating that the amount of the claim is disputed and the defendant has not requested time to pay. In these circumstances the claimant may file a request for judgment for an amount to be decided by the court and fixed costs. The reference to a judgment for an amount to be decided by the court is clearly a reference to what under the Rules of the Supreme Court 1975 would have been referred to as a judgment for damages to be assessed.

11. Finally **rule 14.1(5)** identifies the effect of a payment made with respect to whole of the sum claimed. It provides that if payment of the specified sum claimed is made together with interest and “the appropriate fixed costs” as shown on the claim form then the claim is stayed. The reference to the claim form refers to that part of Form 1 that requires that where the claim is for a specified amount of money the claimant place at the bottom of the claim form the amount claimed; the court fees, the Attorney’s fixed cost on issue and the interest claimed.
12. This requirement is consistent with the document in the CPR referred to as “notes for defendant” that is required to accompany a claim form. This document advises a defendant that it has the option either to defend or admit a claim. With respect to the option of admitting the claim the document advises that if the amount stated on the claim form, including fees, costs and interest, is paid within 8 days no further steps can be taken against the defendant. It also advises the defendant that it can apply for payment of the sum admitted by installments. This is therefore clearly a reference to rule 14.1(5) and those other rules in the Part that deal with applications for time to pay.
13. The ability to seek time to pay, the other feature of the Part, only attaches to admissions made under rule 14.5, 14.6 and 14.7. The Part establishes two procedures in this regard: rule 14.9 deals with the procedure to be followed where the time for and the rate of payment is agreed and rule 14.10 treats with the procedure to be followed where the time for and the rate of payment is not agreed. In both cases the rules specifically provide that the appropriate costs to be applied to the judgment obtained is fixed costs.
14. Part 14 therefore is very specific with respect to the judgments to which fixed costs attach. In accordance with the Part fixed costs attach to judgments on admissions on money claims entered in accordance with rules 14.5, 14.6 and 14.7. Fixed costs also apply where in accordance with

rule 14.8 the defendant seeks time to pay and an order is made pursuant to rule 14.9 or 14.10.

15. The Part also allows for judgments on admissions for non-monetary claims. In such a case these applications are made pursuant to rule 14.3. **Rule 14.3** states:

- “(1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) The terms of the judgment shall be such as it appears to the court that the applicant is entitled to on the admission.
- (3) An application to determine the terms of the judgment must be supported by evidence.”

16. The rule deals with applications for judgment made to a judge. Unlike the rules dealing with over the counter judgments rule 14.3 does not specifically apply fixed costs to judgments on admissions obtained under the rule. For completeness it should be noted that by rule 14.8 requests by a defendant for time to pay, that is, for orders pursuant to rule 14.9 and 14.10 are not available to applications made under rule 14.3.

17. Rule 14.3 therefore permits a claimant to apply to a judge in circumstances where the admission is made by notice in writing for judgment on the admission or in the defendant’s statement of case. It is not limited to money judgments and it does not permit an over the counter judgment. In addition fixed costs are not by the rule specifically made applicable to these judgments. The fact that, unlike over the counter judgments, fixed costs are not specifically made applicable to applications for judgment on admissions made to a judge in accordance with rule 14.3 suggests that fixed costs are not applicable to these applications and only applicable to over the counter judgments.

18. The Respondent submits that the fact that fixed costs are not specified in rule 14.3 is not determinative of the question of what type of costs apply but rather reference must be had to the express language of rule 67.4 and Appendix A to Part 67. Part 67 deals with the quantification of costs. Part 14 makes references to Part 67. In particular rule 14.1 indicates by way of a bracketed note that Part 67 Appendix A Table 1 sets out the fixed costs. By the same means rules 14.5, 14.6, 14.7, 14.9 and 14.10 also make reference to the fact that part 67 deals with quantification of costs.
19. The use to be made of these bracketed notes in the interpretation of the CPR was considered by Mendonca JA in the case of **Nizam Mohammed v Attorney General Civil Appeal 75 of 2013**. According to Mendonca JA at paragraph 17 of the judgment:
- “.....I think it is fair to say that the reference to parts or rules of the CPR appearing at the end of some rules in the CPR may be used as an aid to the interpretation of the rule under which the reference appears. On this score it is therefore not unreasonable to take into account the reference to part 66 in interpreting 56.14. However I do not think that the references at the end of a rule to other parts or rules of the CPR should be given any greater significance than headings or marginal notes in an Act. In **Bennion on Statutory Interpretation** (4th edition) it is said in relation to both marginal notes and headings that they may be considered as an aid to interpretation but due account must also be taken of the fact that their function is merely to serve as a brief and therefore possibly inaccurate guide to (in the case of marginal notes) the content of the section and (in the case of headings) the material to which it is attached. So too in the case of the CPR the references to a rule or a part of the CPR appearing at the end of some rules, are not a complete guide to all other parts or rules that might be relevant. They are not intended to cross reference all other relevant parts or rules”.

The information conveyed by these notes therefore while not determinative of the manner in which a rule may be interpreted can be used as an aid to the interpretation of the relevant rule(s).

20. **Part 67** deals with the way in which any costs awarded by the court are quantified: **rule 67.1. Rule 67.3** provides that: “Costs of proceedings under these Rules are to be quantified as follows:

“(a) where rule 67.4 applies, in accordance with the provisions of that rule; and

(b) in all other cases if, having regard to rule 66.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:

(i) costs determined in accordance with rule 67.5 (“prescribed costs”);

(ii) costs in accordance with a budget approved by the court under rule 67.8 (“budgeted costs”); or

(iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rules 67.1¹ and 67.12.”

21. Rule 67.3(a) provides therefore that where rule 67.4 applies the quantification of those costs shall be in accordance with the provisions of that rule. Two things stand out here the first being that the rule refers to the quantification of costs. The second is that a distinction is made between those costs to which 67.4 applies and the other categories of costs. The other categories require a judge to order such costs. In these circumstances these latter categories of costs, namely prescribed, budgeted and assessed, will not apply to over the counter judgments.

22. **Rule 67.5(1)** establishes the general rule with respect to costs. It provides that where rule 67.4 does not apply and a party is entitled to the costs of

¹ This seems to be a mistake. It should read rule 67.11 rather than rule 67.1

any proceedings those costs must be determined in accordance with Appendices B and C of the Part and paragraphs (2)-(4) of the rule. Paragraphs (2)-(4) of the rule and Appendices B and C of part 67 treat with the manner by which prescribed costs are to be quantified.

23. **Part 67.4**, which according to the heading deals with fixed costs, states:
- “(1) A party is entitled to the costs set out in Part I of Appendix A.
 - (2) The court may, however, direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.
 - (3) If so, the court must assess such costs.”
24. It is fair to say that in the context of the Part the heading identifying rule 67.4 as dealing with fixed costs is accurate. Substituting fixed costs for the reference to rule 67.4 in the rule 67.3(a) and applying a plain and literal meaning to rules 67.3 and 67.4 those rules require that where fixed costs apply the costs shall be quantified in accordance with Appendix A. Neither rule identifies the matters to which fixed costs would apply but simply treat with the manner by which such costs are to be computed by reference to Appendix A. This is consistent with the stated purpose of the Part to deal with the manner in which any costs awarded by the court are to be quantified and is also consistent with the bracketed notes found in Part 14 and Part 14 itself.
25. It follows therefore that where fixed costs are made applicable by the CPR a party is entitled to the costs as quantified by Part 1 of Appendix A of Part 67. However where a judge determines that a party is entitled to some other costs for an item of the work identified at Part 2 the judge may assess such costs. Where fixed costs are not applicable, in accordance with rule 67.5(1), as a general rule a party is entitled to the costs set out at Appendixes B and C of Part 67, that is, prescribed costs. It must be noted here that Appendixes B and C do not themselves set out a list of the type of

matters to which prescribed costs apply but rather provide the means of quantifying such costs.

26. **Appendix A** states:

“

PART 1

This part of the appendix sets out the fixed costs applicable to a claim for a specified sum of money:

- (a) Table 1 – which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered against him under Part 12. These sums are to be entered on the claim form. The table also deals with claims for possession of land or delivery of goods and an application for an attachment of debts order.
- (b) Table 2 – which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1.

SCALE OF FIXED COSTS

TABLE 1

1. This Table shows the fixed costs to be entered on a claim form or provisional attachment of debts order in respect of attorney's-at-law charges –

- (a) in an action for payment of a specified sum of money;
- (b) in attachment of debt proceedings; or
- (c) in an action for the recovery of land.

2. In addition to the fixed costs hereunder the appropriate court fee is to be allowed.

	Claim	Fixed Cost
(1)	Claim not exceeding \$15,000	\$ 750.00

(2)	Claim exceeding \$15,000 but not exceeding \$25,000 or a claim for recovery of land or goods	\$1,000.00
(3)	Claim exceeding \$25,000 but not exceeding \$100,000	\$1,200.00
(4)	Claim exceeding \$100,000 but not exceeding \$500,000	\$1,400.00
(5)	Claim exceeding \$500,000 but not exceeding \$1m	\$1,600.00
(6)	Claim exceeding \$1m but not exceeding \$5m	\$2,000.00
(7)	Claim exceeding \$5m	\$2,500.00

TABLE 2

This Table shows additional costs which may be added to the entry of a default judgment under Part 12 or a judgment on admissions under Part 14 for a specified sum of money.

(1)	Basic costs	\$650.00
(2)	Where there is more than one defendant, in respect of each additional defendant served against whom judgment is entered	\$100.00
(3)	Where an order is made under rule 5.12 (specified method of service), for each defendant served	\$800.00
(4)	When an order is made under Part 7, for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	\$800.00
(5)	Where judgment is entered on an admission and the claimant accepts the defendant's proposal as to method of payment under rule 14.9	\$650.00
(6)	Where judgment is entered on admission and the time and rate of payment are not agreed under rule 14.10	\$800.00"

Part 2 of Appendix A deals with enforcement and is not relevant to this appeal.

27. Basically Appendix A consists of two tables. These tables identify how fixed costs are to be quantified by reference to a scale of costs (Table 1) and to sums which are to be added on to the appropriate sum identified in Table 1 depending on the step taken or the nature of the application (Table 2).
28. With respect to judgments on admissions since over the counter judgment on admissions, that is, judgments pursuant to 14.5, 14.6 and 14.7 are for a specified sum of money Table 1 will apply. Since Table 2 specifically identifies sums that are to be added to the entry of a judgment on admissions Table 2 will also apply. Where fixed costs are prescribed for judgments on admissions therefore both Table 1 and Table 2 apply.
29. Reading Appendix A in this manner it is clear that rather than attempt to list the matters to which fixed costs apply the fact that Appendix A refers to various types of matters has more to do with the manner by which the tables are to be applied rather than an exhaustive list of the types of matters to which fixed costs apply. Read this way Appendix A makes perfect sense and does not conflict with Part 14.
30. Insofar as the Appendix makes reference to the avoidance of judgments in default of defence, recovery and/or possession of land, attachment of debts orders and judgments on admissions it is with respect to how the tables are to be applied rather than establishing that these are the matters to which fixed costs apply. This interpretation is consistent with the fact that, like Part 14, both Part 12 (judgments in default of defence) and Part 51 (attachments of debts) specifically identify when fixed costs are to apply.

Rule 12.9 states:

“Default judgment gives a claimant a right to fixed costs unless the court assesses the costs.

(Rule 67 sets out what are fixed costs and how costs are assessed)”

Similarly **Rule 51.14(3)** provides:

“The judgment creditor’s costs are those fixed by Appendix A to Part 67 unless the court makes some other order in which case it must assess the amount of his costs.”

It would seem therefore that under the CPR when fixed costs are to apply provision is generally made for those costs to apply elsewhere than in Appendix A.

31. The Judge was of the opinion that fixed costs applied because Table 2 of Appendix A clearly related to judgments on admissions under Part 14 for a specific sum of money ‘without any distinctions or limitations’. According to the Judge:

“[Part 67.4] clearly provides for the payment of fixed costs on a claim for a specified sum in respect of which judgment is taken up on an admission pursuant to Part 14. For clarity the court does not accept that its application is restricted only to the circumstances described in part 14.1 (3) or (4).”

He was of the view that upon a plain reading of the rule part 67.4 applied since it encompassed “a judgment entered by admission pursuant to Part 14 regardless of its route to that judgment”.

32. Where the Judge went wrong is in assuming that it was Appendix A that determined whether fixed costs applied. In doing so he failed to take into consideration: (a) that Part 67 only deals with the manner in which costs are to be quantified; and (b) the provisions of Part 14 and in particular the fact that Part 14 was very specific with respect to those judgments to which fixed costs applied. The interpretation placed on the Appendix by the judge did not accord with the plain and literal meaning of either Part 14 or Part 67.

33. In the instant case the claim was for a money claim, the admission was with respect to a specified amount of money and was made in the Appellant's defence. In these circumstances rule 14.6 would apply. **Rule 14.6** states:

- “(1) This rule applies where –
 - (a) the only remedy which the claimant is seeking is payment of money; and
 - (b) the defendant admits a specified amount of money in his appearance or in his defence.
- (2) The court office must serve a notice on the claimant requiring him to file a notice stating whether –
 - (a) he accepts the amount admitted in satisfaction of his claim; or
 - (b) he wishes the proceedings to continue.
- (3) The claimant must –
 - (a) file the notice; and
 - (b) serve a copy on the defendant, within 14 days after the court's notice is served on him.
- (4) If the claimant does not file the notice within 14 days after the court's notice is served on him-
 - (a) the claim is stayed; and
 - (b) any party may apply for the stay to be lifted.
- (5) If the defendant has not requested time to pay under rule 14.8, the claimant may file a request for judgment for the amount admitted, interest and fixed costs and may specify –
 - (a) the date on which the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid by installments.
- (6) The court office must enter judgment in accordance with the request.
- (7) If the claimant files notice under paragraph (2) that he wishes the claim to continue the court office must fix a date, time and place for a case management conference.

(Part 27 sets out the procedure relating to a case management conference, Part 67 deals with quantification of costs)”

34. Rule 14.6 therefore mandates the Court Office to serve a notice on the Appellant requiring him to file a notice stating whether he accepted the amount admitted in satisfaction of his claim or if he wished the proceedings to continue. This was not done in this case. Had this been done the Appellant would have had the option either to accept the sum in full satisfaction of his claim or to pursue its full claim. Had the Appellant opted to accept the sum then an over the counter judgment would have been entered against the Respondent and the Appellant entitled to its fixed costs quantified in accordance with Appendix A. Had the Appellant opted to continue with the claim then the option of a judgment pursuant to rule 14.6 would not have been open to him.
35. Contrary to the requirement of the rule no notice was served by the Court Office in accordance with rule 14.6 (2). Accordingly the Appellant was not required to opt whether he wanted a judgment for the amount admitted in accordance with rule 14.6 (5) and to continue the claim for the balance of the sum claimed in accordance with rule 14.6(7) or to proceed to a case management conference with respect to the balance of the claim. In the latter case, unless an application was made by the Appellant pursuant to rule 14.3, the matter would have proceeded to trial in the normal course of events without the Appellant obtaining a judgment on the admission made by the Respondent.
36. What the Appellant did was to make an application to the Judge in accordance with rule 14.3. The application sought an order for the payment of the sum admitted, interest and costs to be quantified on the scale of prescribed costs and for the remaining issues on the claim to proceed to trial. In accordance with the rule the Appellant was entitled to do so it being with respect to an admission made by a notice in writing. The order sought

by the Appellant was not an order that was open to be made under rule 14.6. Further Part 14 does not prevent a claimant making an application under rule 14.3 where it seeks a judgment on admissions for a part of the sum claimed and to proceed with the action. Nor is there any other rule in the Part that allows such an application to be made.

37. Rule 14.3 does not identify fixed costs as the appropriate cost regime to be applied to applications made pursuant to the rule. In the circumstances, in accordance with the general rule stated in rule 67.5(1), since fixed costs did not apply prescribed costs was applicable to the Appellant's application under rule 14.3. In these circumstances the Judge was wrong to award the Appellant fixed costs. The costs awarded should have been prescribed costs based on the value of the claim and the stage of the proceedings. Since the case had not yet reached the case management stage in accordance with Appendix C the appropriate order was 45% of the costs computed on the value of the claim. The sum arrived at here is \$ 987,606.62.
38. **Rule 67.5(4)** however allows a judge in certain circumstances to award a lesser sum. **Rule 67.5(4)** states:

“(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.”

39. The reference in 67.5(4)(b)(ii) to fixed costs is clearly a mistake as Appendix C specifically deals with prescribed costs. The reference to fixed costs here seems to harken back to the recommendation by Greenslade that the costs now called prescribed costs in the CPR be called fixed costs: see the recommendations made by Dick Greenslade in his work **Judicial Sector Reform Project Review of Civil Procedure at pages 157 to 158 and 160 to 164**. In these circumstances the words ‘prescribed costs’ should be read into that part of the rule instead of ‘fixed costs’.
40. **Rule 66.6 (4),(5) and (6)** require the court to have regard to all the circumstances and:
- “(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.”

This is essentially a determination to be made by the trial judge who has had the conduct of the case.

41. In the case of **First Citizens Bank v Big Q Consulting Services Limited Civil Appeal S 301 of 2017** we held that a determination by a judge to award a percentage of the prescribed costs amounted to an exercise of a discretion by the judge and accordingly in doing so regard must be had to rule 67.2(1) of the CPR.

Rule 67.2 (1) provides:

“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 to both the person paying and the person receiving such costs.”

The application of prescribed costs here requires that this case be remitted to the Trial Judge for his determination as to whether this is an appropriate case for the exercise of his discretion to award a lesser sum.

42. In the circumstances this appeal is allowed and the determination by the Trial Judge that the Appellant is entitled to its fixed costs is set aside and prescribed costs substituted in its stead. The matter is remitted to the Trial Judge for him to determine whether the Appellant ought to be awarded its full costs in the sum of \$987,606. 62 or a lesser sum in accordance with rules 67.5 (4) and 67.2(1) of the CPR.

Judith Jones
Justice of Appeal

ERRATA/CORRECTION TO WRITTEN JUDGEMENT OF THE 17TH APRIL 2019

1. Last sentence of paragraph 37, substitute “\$170,120.25” in place of “\$987,606.62” so that the sentence is to read:

“The sum arrived at here is \$ 170,120.25.”

2. Second sentence of paragraph 42, substitute “\$170, 120.25” in place of “\$987,606.62” so that the sentence is to read:

“The matter is remitted to the Trial Judge for him to determine whether the Appellant ought to be awarded its full costs in the sum of \$170, 120.25 or a lesser sum in accordance with rules 67.5 (4) and 67.2(1) of the CPR.”

Dated the 29th day of May 2019.

Moosai, J.A.

Jones, J.A.

des Vignes, J.A.