

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2017/CLE/gen/01181

BETWEEN:

MATTHEW SEWELL

Claimant

AND

THE ATTORNEY GENERAL OF THE BAHAMAS

1st Defendant

THE MINISTER OF IMMIGRATION

2nd Defendant

THE COMMISSIONER OF POLICE

3rd Defendant

**SUPERINTENDENT OF THE BAHAMAS DEPARTMENT OF CORRECTIONAL
SERVICES**

4th Defendant

DIRECTOR OF IMMIGRATION

5th Defendant

OFFICER IN CHARGE OF THE CARMICHAEL ROAD DETENTION CENTRE

6th Defendant

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Frederick Smith, KC with R. Dawson Malone, Doneth Cartwright and Ian Cargill for the Claimant
Kayla Green-Smith with Adele Mangra and Lavado Frazer for the Defendant

Hearing Date On the papers

DECISION ON COSTS

SIR IAN WINDER, CJ

- [1.] On 6 May, 2025, I gave my decision on two distinct applications brought by the Defendants (the AG) in this action. At that time, I indicated that I would hear the parties as to the appropriate order for costs, by written submissions. Each party lodged written submissions, which I have considered and which I summarize below. This is my decision on costs.
- [2.] The AG had applied by Notice of Application (Amended) seeking the following relief:
- 1.1 An extension of time to apply for leave to appeal the interlocutory order dated 19 August, 2020 and the interlocutory judgment dated 7 September, 2020;
 - 1.2 Leave to appeal the interlocutory order dated 19 August, 2020 and the interlocutory judgment dated 7 September, 2020, and
 - 1.3 A stay of execution pending appeal of the judgments delivered by Bowe-Darville J., on 7 September, 2020 and 2 August, 2024.
- [3.] The substance of the decision is to be found at paragraphs 22 and 23 of the written decision, where it was determined as follows:

“Conclusion

- [22] **I refuse the application for extension of time and consequently for leave to appeal the interlocutory decisions of Bowe-Darville J., dated 19 August, 2020 and 7 September, 2020.**
- [23] **I will grant a stay of the execution of the 2 August, 2024 judgment of Bowe-Darville J., pending appeal, on the condition that the AG makes a payment on the said judgment of \$100,000. I make this determination taking into account an earlier payment made by the AG and their submissions during the earlier proceedings as to the value of any claim by Sewell. The sums are to be paid within 60 days, failing which the stay will be lifted.”**
- [4.] It is accepted by both parties that the Court has a discretion as to costs. Section 30 of the Supreme Court Act, provides:
- “30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**

Rule 71.9 of the **Supreme Court (Civil Procedure) Rule 2022** provide:

“71.9 Court’s discretion to order costs.

(1) The Court has discretion as to —

- (a) whether costs are payable by one party to another;**
- (b) when to assess costs;**
- (c) the amount of those costs; and**
- (d) when they are to be paid.**

(2) Without limiting the Court’s discretion or the range of orders open to it, the Court may order a person to pay —

- (a) costs from or up to a certain date only;**
 - (b) costs relating only to a certain distinct part of the proceedings; or**
 - (c) only a specified proportion of another person’s costs.**
- ...”**

[5.] The Claimant (Sewell) submits that:

“2. The Claimant submits that he ought to be awarded costs as set out herein after.

2.1. The application for leave to appeal was refused and therefore the usual costs follows the event applies.

2.2. The stay application was only granted in part and that part was in fact inconsistent with what was proposed by the Claimant and therefore the hearing would have been unnecessary if the Defendants had simply agreed.

2.2.1. The general practice on stay pending appeal when granted is costs be costs in the appeal.

2.2.2. The costs were incurred however as a result of the conduct of the Defendants which brings this into the exceptions.”

3. Having regard to the interests of efficiency, proportionality, and the two appearances, the documents prepared, nature of the proceedings; the Claimant submits that costs should be awarded to him in the fixed sum of \$22,451.00 comprising:

- 3.1. Professional fees: \$20,000;**
- 3.2. Contribution to VAT: \$2,000;**
- 3.3. Photocopies/printing: \$251;**
- 3.4. Delivery charges (x2): \$200.**

- [6.] The AG submits that:
“Following the decision of the Honourable Chief Justice, it is clear that both the Claimant and the Defendants were successful on different parts of the application. Based on the fact that the Claimant had given indication in their supporting Affidavits that Mr. Sewell was experiencing financial difficulty, a stay could have been reasonably agreed without having to bring these said proceedings because it would disadvantage the Defendants. In the forgoing circumstances, it is humbly submitted that both parties bare their own costs.”
- [7.] Costs are in the discretion of the Court, in which case it is a discretion that must be exercised judicially, i.e., in accordance with established principles and in relation to the facts of the case. The starting point is the general rule, that costs follow the event and, therefore, the successful party ought to be paid their costs. That general rule falls to be applied unless there are cogent reasons to depart from it.
- [8.] In my view these are two entirely distinct types of applications, notwithstanding they were pursued in the same Notice of Application.
- [9.] It is accepted that Sewell was entirely successful in defending the AG’s application for leave to appeal, in which case there is no reason why he ought to be deprived of those costs.
- [10.] On the question of the costs of the stay application, while the AG was partially successful in the application, I would make the usual order for these costs to be costs in the appeal. I am not persuaded, despite the urging of both parties, to make a different order having regard to the conduct of the parties.
- [11.] In all the circumstances of the case, including the time spent before me, the work reasonably expended, the seniority of counsel, the importance of the matter, the nature of the issues which required determination, I order that that the AG pay the gross sum of \$9,000 to the Claimant in lieu of taxed costs.

Dated the 30th day of June, 2025



Sir Ian R. Winder Kt.
Chief Justice