

COMMONWEALTH OF THE BAHAMAS 2018

IN THE SUPREME COURT

Common Law and Equity Side

2022/CLE/qui/00084

IN THE MATTER OF ALL THAT piece parcel or lot of land comprising Three Thousand Four Hundred Seventy-Three (3,473) square feet situate on the Dunmore Harbour in Dunmore Town on the Island of Harbour Island one of the Islands of the Commonwealth of The Bahamas (*“Dockside Cottage Property”*)

And

IN THE MATTER OF ALL THAT piece parcel or lot of land comprising Three Thousand Three Hundred and Eighty-nine (3,389) square feet situate on the said Dunmore Harbour in Dunmore Town on the said Island of Harbour Island of the said Commonwealth of The Bahamas (*“Shoreline Cottage Property”*) (collectively *“the properties”*)

IN THE MATTER OF the Quieting Titles Act, 1959

IN THE MATTER OF the Petition of Laura Dodge

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Richette Percentie with Darren Bain for the Petitioners
Kenria Smith with Zoe Bowleg and Perry McHardy for the Crown
Timothy Eneas KC with Ava Laroda for the Adverse Claimant Lawrence Dawson

Hearing date(s): Heard on the papers

JUDGMENT

WINDER, CJ

[1.] On 20 February 2025 I gave judgment dismissing the Petition filed in this action and indicated that I would hear the parties as to the appropriate order on costs, by written submissions. Each party lodged written submissions, which I have considered. This is my decision on costs.

[2.] There were two adverse claimants who participated in the investigation along with the Petitioner (Dodge), namely, Minister responsible for the Acquisition & Disposition of Land (the Crown) and Lawrence Dawson (Dawson).

[3.] Dodge contended that she had acquired an interest in 2 tracks of land (collectively “the Properties”) measuring Three Thousand Four Hundred Seventy-Three (3,473) square feet and Three Thousand Three Hundred and Eighty-nine (3,389) square feet respectively situated on the Dunmore Harbour, in Dunmore Town on the Island of Harbour Island, Eleuthera.

[4.] The Crown asserted that it was the beneficial owner to the Properties as they form part of a road reservation “Dunmore Street” and is Crown land.

[5.] Dawson claimed to have a possessory title. Dawson contended that the Properties are Crown lands over which he has exercised rights of occupation and user for a period exceeding 16 years prior to the commencement of the proceedings. Dawson owns three (3) parcels of land in the Sunset Harbour Development and the marina facility which adjoins the western boundary of the Properties.

[6.] In the judgment the Court dismissed Dodge’s Petition and recognised the title of the Crown that the Properties were part of a road reservation “Dunmore Street” and Crown lands.

[7.] Dodge’s case is that the Crown was the only successful party and that their costs ought to be borne by it and Dawson jointly on a standard basis. She says that the Court should make the following order on costs:

- (a.) The Petitioner and Dawson should pay the costs of the Crown, to be assessed if not agreed on a standard basis;
- (b.) Disallowing Dawson from recovering any costs with respect to the action; and
- (c.) Refusing to order costs on an indemnity basis.

[8.] Dawson seeks its costs against Dodge on an indemnity basis. He says that the dismissal of the Petition recognized the public right of way, a right to which he says he claimed in his submissions.

[9.] The Crown seeks their costs against Dodge on an indemnity basis. It does not seek any costs against Dawson.

[10.] It is accepted by all 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.

Rules 71.9 and 71.10 of the **Supreme Court (Civil Procedure) Rules 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.

(3) In deciding who, or if any person should be liable to pay costs, the Court must have regard to all the circumstances.

(4) Without limiting the factors which may be considered, the Court must have regard to —

- (a) the conduct of the parties both before and during the proceedings;
- (b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;
- (c) the manner in which a party has pursued —
 - (i) a particular allegation;
 - (ii) a particular issue; or
 - (iii) the case;
- (d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;
- (e) whether it was reasonable for a party to —
 - (i) pursue a particular allegation; or
 - (ii) raise a particular issue; and
 - (iii) whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and

(f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

71.10 Circumstances to be taken into account when exercising its discretion as to costs.

(1) In deciding what order, if any, to make about costs, the Court must have regard to all the circumstances, including —

- (a) the conduct of all the parties;
- (b) whether a party has succeeded on part of his case, even if he has not been wholly successful;
- (c) any payment into court or admissible offer to settle made by a party which is drawn to the Court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.

...

(3) The Court may make an order that a party must pay —

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct issue in or part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before judgment.

(4) Where the Court would otherwise consider making an order under paragraph (3)(f), it must instead, if practicable, make an order under paragraph (3)(a) or (c).

...

Discussion

[11.] Costs are in the discretion of the Court, in which case it is a discretion 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.

[12.] In *Re Elgindata (No. 2)* [1992] 1 WLR 1207, the petitioners, shareholders in Elgindata Ltd., obtained an order that another shareholder in the company (the "purchasing shareholder") purchase their shares in proceedings brought under section 459 of the *English Companies Act 1985*. The trial judge found most of the petitioners' case failed but found some conduct on the part of the purchasing shareholder was unfairly prejudicial. The trial judge therefore ordered that three-quarters of the purchasing shareholder's costs be paid by the petitioners and one-quarter of the petitioners' costs be paid by the purchasing shareholder. The English Court of Appeal substituted an order that the petitioners should be deprived of half of their costs. *Nourse LJ* said at pages 1213 and 1214:

In order to show that the judge erred I must state the principles which ought to have been applied. They are mainly recognised or provided for, it matters not which, by section 51 of the Supreme Court Act 1981 and the relevant provisions of R.S.C., Ord. 62, in this case rules 2(4), 3(3) and 10. They do not in their entirety depend on the express recognition or provision of the rules. In part they depend on established practice or implication from the rules. The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs. Of these principles the first, second and fourth are expressly recognised or provided for by rules 2(4), 3(3) and 10 respectively. The third depends on well-established practice. Moreover, the fourth implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party's costs. It was because of his disregard of that principle that the judge erred in this case.

[Emphasis added]

[13.] In my judgment, it is the Crown which is to be regarded, as a matter of substance and reality, the successful party in this litigation. That fact is not in dispute nor is it disputed that Dodge is the losing party. The real issue is, as to how Dawson ought to be treated.

[14.] Dawson, in my view, has had mixed success. In addition to asserting the public right of way Dawson also asserted some personal rights to the Properties which assertions were not successful. He had an interest in participating in the investigation having regard to the proximity of his properties to the Properties and his use of the public right of way. Had Dodge been successful it would have affected his right of access across the public road, i.e. the public right of way adjoining his properties and to the marina/dock. It was nonetheless, a public road, the property of the Crown and not that of Dawson. The Crown was indeed a participant defending its rights in the Properties.

[15.] I readily concede that Dawson's submissions and participation helped the Court in the investigation in deciding to accept that the Properties remained Crown Land and a public road reservation. This is readily apparent from a review of the judgment, which cited Dawson's submissions. I therefore reject the submission that Dawson's participation prolonged the investigation proceedings.

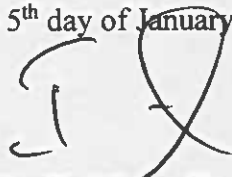
[16.] I am also cognizant that an unsuccessful litigant ought not to be exposed unfairly to duplicate costs (See **Weisfisch v. Weisfisch and others; Weisfisch and others** [2011] 1 BHS J. No. 103 paragraphs 56-57).

[17.] In the circumstances the just and proportionate order to make is that there be no order as to costs in relation to Dawson.

[18.] I am not minded to award costs against Dodge on an indemnity basis as I am not satisfied that, notwithstanding there may be some moral concerns, a proper case has been made out for indemnity costs.

[19.] In conclusion, I order that Dodge shall pay the Crown's costs, certified fit for two counsels, on the standard basis. Such costs awarded to be assessed in default of agreement.

Dated the 5th day of January 2026

A handwritten signature in black ink, appearing to be 'I. Winder', written over a horizontal line.

Sir Ian R. Winder Kt.
Chief Justice